

Appendix M: Public Comments Received Draft EIR

Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA

Cynthia Bryant
DirectorGovernor's Office of Planning and Research
State Clearinghouse

Facsimile Transmittal

Date: 4-16-09

Fax Number: 714-508-4110

To: Margaret

From: Linnell's Gilmore

Instructions: Per your request, the closing letter
for project SC# 2008051096.

State Clearinghouse Fax: 916-323-3018

Number of Pages
Including cover sheet13

ARNOLD SCHWARZENEGGER
GOVERNORSTATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNITCYNTHIA BRYANT
DIRECTOR

April 14, 2009

Rosalinh Ung
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658Subject: Marina Park
SCH#: 2008051096

Dear Rosalinh Ung:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on April 13, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

A1-1

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts
Director, State ClearinghouseEnclosures
cc: Resources Agency

**Document Details Report
State Clearinghouse Data Base**

A1
Attachment 1

SCH# 2008051096
Project Title Marina Park
Lead Agency Newport Beach, City of

Type EIR Draft EIR

Description The public park will provide for passive and active areas. The passive areas include an open lawn area and a water feature. The active areas will included a children's play area and basketball courtst. The public short-term visiting vessel marina is proposed to accommodate visiting vessels for up to 30 days. Utility hook-ups are proposed to be available for the marina. Bathrooms and laundry areas are proposed adjacent to the marina. The Balboa Center Complex will include rooms for educational classes as well as community events. The Balboa Center Complex will have a restaurant situated on the second story and will include areas for marina rentals as well as room for sailing classes. There are two tennis courts proposed on the eastern portion of the site adjacent to 15th Street. In addition, an existing bathroom on the public beach adjacent on to 19th Street is proposed to be renovated or reconstructed but the size of the bathroom facility will remain the same.

Lead Agency Contact

Name Rosalinh Ung
Agency City of Newport Beach
Phone (949) 664-3200
email
Address 3300 Newport Boulevard
City Newport Beach
State CA **Zip** 92658
Fax

Project Location

County Orange
City Newport Beach
Region
Lat / Long 33° 36' 28" N / 117° 55' 23" W
Cross Streets W. Balboa Boulevard and 17th Street
Parcel No.
Township 6S **Range** 10W **Section** 33 **Base** NB

Proximity to:

Highways Hwy 1
Airports
Railways
Waterways Newport Bay
Schools Newport Elementary
Land Use Parks, Community Facilities and Mobile Homes/Parks and Recreation, Public Facilities

Project Issues Aesthetic/Visual; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Landuse; Noise; Public Services; Recreation/Parks; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing

Reviewing Agencies Resources Agency; Department of Boating and Waterways; California Coastal Commission; Department of Fish and Game, Region 5; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 12; Regional Water Quality Control Board, Region 8; Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission

Date Received 02/27/2009 **Start of Review** 02/27/2009 **End of Review** 04/13/2009

Note: Blanks in data fields result from insufficient information provided by lead agency.

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



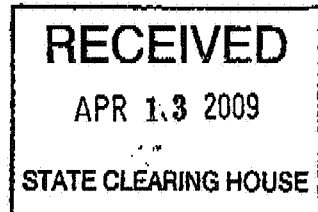
April 13, 2009

A1
Attachment 2

Rosalinh Ung, Associate Planner
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Cher
4.13.09
e

Re: **Marina Park Project**
Draft Environmental Impact Report (SCH# 2008051096)



Dear Ms. Ung,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Marina Park Project. According to the Draft Environmental Impact Report, the proposed project will consist of construction of the Balboa Center Complex consisting of a Multi-Purpose Building and Sailing Program Building, a Girl Scout House, a marine services building, parking areas, a park, beach and marina basin on an existing public beach fronting (along Newport Bay) parcel that currently supports 57 mobile homes, the Neva B. Thomas Girl Scout House, the City of Newport Beach Community Center, a 21-stall metered parking lot, Las Arenas Park, a Southern California Edison parcel, Veteran's Park, an alley, a sidewalk, the 19th Street public restroom, a beach, and a portion of Newport Bay.

The proposed project is located within the coastal zone in the City of Newport Beach. The proposed development will require a coastal development permit from the California Coastal Commission.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to dredge and fill of open coastal waters/wetlands, water quality, hazards, biology, public access, visual impacts and consistency with the City of Newport Beach Land Use Plan (LUP).

Below are the comments by Commission staff on the Draft Environmental Impact Report.

WETLANDS

Dredging and Fill

Based on the Draft EIR, the project site includes approximately 1.20 acres of intertidal coastal wetland and approximately 0.10 acres of subtidal coastal wetland. Also, the project includes approximately 62,000 cubic yards of dredging and states that a total of eight (8) preliminary candidates have been identified as potential sand disposal locations (The Draft EIR fails to indicate the final chosen site). In addition, the project will result in the onsite loss of 0.9 acres of supra-tidal (terrestrial) non-marine habitat and 0.66 acres of sandy intertidal habitat for the onsite creation of 1.56 acres of shallow water habitat. The loss of 0.66 acres of sandy habitat

Draft Environmental Impact Report
Marina Park Project
Page 2 of 7

would become shallow water habitat. Also, the proposed project will result in the depth modification of 0.1 acres of onsite shallow water habitat and 0.72 acre of offsite shallow water habitat.

The proposed project would result in the dredging and fill of open coastal waters/wetlands. Section 30108.2 of the Coastal Act defines "Fill" as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the dredging and fill of wetlands and open coastal waters to seven uses and it appears that the proposed project does result in both "Dredging" and "Fill" of open coastal waters. Projects that propose the dredging and fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed dredging and fill would qualify as allowable under the Coastal Act. Also, clarification should be made on whether or not the delineation of wetlands and coastal waters was based on Coastal Act standards or another agency's (i.e. Army Corps of Engineers) standard. If the habitat delineation and calculation of fill was not determined by Coastal Act definitions, then a revised biological analysis regarding the proposed fill should be conducted using the Coastal Act definitions. The City's Coastal Land Use Plan contains more description about wetland delineation procedures for Coastal Act purposes.

Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

Typically, the Commission prefers on-site mitigation to off-site mitigation. The Commission typically requires that mitigation be done at a 4:1 ratio. In addition, the applicant must be fully responsible for undertaking the mitigation. In this way, the Commission is assured that the mitigation will occur and it is clear who is responsible for undertaking and managing the mitigation. The EIR should discuss the mitigation that would be proposed. However, every effort should be made to choose an alternative that would be the least environmentally damaging, preferably avoiding coastal water/wetland impacts.

Sand Compatibility Report

As stated previously, the project includes dredging and the deposition of sand upon eight (8) potential sand disposal locations. These sand disposal locations were not identified, nor was the final disposal location identified. Staff assumes that a potential location would be the public beach found on the project site. Thus, please first identify this location and then provide a sand compatibility report for this location. Please also have the U.S. Army Corps of Engineers (USACE) and Environmental Protection Agency (EPA) review the beach sampling to characterize the existing grain for compatibility with the borrow source material.

MARINA

The proposed marina will require construction of a new groin wall and bulkhead walls. This raises concerns regarding fill of open coastal waters/wetlands, effect on sand supply and coastal erosion. Is a new marina necessary at this location? In the Draft EIR, one of the identified project alternatives is "The No Marina Alternative." The document states that implementation of this alternative would eliminate the potential significant impacts on sandy

Draft Environmental Impact Report
Marina Park Project
Page 3 of 7

intertidal habitat; as well as, the long-term water quality impacts associated with flushing of the proposed marina (to be discussed later). However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

While staff has serious concerns with the proposed marina, further information regarding the proposed marina is still necessary if you wish to proceed with the project as submitted:

Groin Wall

The Draft EIR states that the proposed marina will be enclosed by a cement groin and include eighteen (18) pilings that will create hard bottom habitat. Section 30235 of the Coastal Act mandates that groin walls must be permitted in certain specified conditions. The Commission is concerned that this type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

Additionally, Section 30233 of the Coastal Act limits the filling of coastal waters to seven allowable uses and requires that the least environmentally damaging feasible alternative is chosen and that feasible mitigation measures be provided to minimize adverse environmental effects. Sections 30230 and 30231 of the Coastal Act mandate that the quality of coastal waters and biological productivity be maintained.

Projects that propose the fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed fill for the groin wall would qualify as allowable under the Coastal Act. Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

The document does not provide any studies that substantiate the need for the groin wall nor does it provide information on how it may impact coastal shoreline processes. Due to this, an engineering analysis prepared by a qualified engineering professional with expertise in coastal processes is required. Specifically, staff will need an evaluation of the proposed project's impact on sand supply, erosion rates, and adjoining property and determination. Also, an evaluation of whether the proposed project will require monitoring to assure that shoreline processes are not adversely impacted is required. In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the groin wall. Another possible alternative could be construction of the marina without the groin wall.

Bulkhead

The Draft EIR states that the proposed marina will include new bulkheads. Section 30235 of the Coastal Act mandates that new bulkheads may only be constructed under specific circumstances, such as to protect existing structures. The Commission is concerned that this

Draft Environmental Impact Report
Marina Park Project
Page 4 of 7

type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

The materials submitted with your application do not substantiate the need to construct new bulkheads. Thus, please provide a study prepared by an appropriately licensed professional (i.e. engineer with expertise in coastal processes), which substantiates the need to construct new bulkheads. At minimum, the study must answer the following questions: Why must the proposed bulkheads be constructed?; How will the proposed bulkheads mitigate the circumstances, which requires the bulkheads to be constructed?; How will the proposed bulkheads affect coastal processes, including impacts upon shoreline sand supply?; Will the proposed bulkheads be connected to any existing bulkheads located adjacent to the project site? In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the bulkheads. Please reference the attached memorandum titled *Applicants for Shorefront Development*.

Water Quality

The Regional Water Quality Control Board (RWQCB) has identified Lower Newport Bay as an impaired water body. As stated in the Draft EIR, implementation of the proposed marina would create a condition where there would be inadequate tidal flushing within the proposed marina and thus contribute to the impaired water body since long-term water quality within the proposed marina will be governed by its flushing capacity. Also stated in the Draft ER, a water quality analyses was conducted that indicated that tidal flushing rates would be poor and that flushing capacities are well below the EPA guideline. It states that inadequate tidal flushing in the marina basin would result in lowered dissolved oxygen levels, higher water temperatures, poor water transparency, potential eutrophication, and increased sedimentation. In addition, poor tidal flushing would also exacerbate water quality issues in this region of the bay since the tidal flushing rate in this part of the harbor is already poor outside the proposed marina in front of the swimming beach and the American Legion Post 291 Marina. Poor tidal flushing within the marina would result in a significant, long-term impact on Newport harbor water quality and would severely limit the colonization of marina habitats by plants, invertebrates, and fish. In order to deal with the adverse long-term water quality impacts due to poor tidal conditions, a mitigation measure consisting of installing mechanical devices within the marina basin design to enhance the movement and mixing of water within the basin has been proposed. One of the identified project alternatives in the Draft EIR is "The No Marina Alternative." The Draft EIR states that implementation of this alternative would eliminate the long-term water quality impacts associated with flushing of the project marina. However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

Slips

The vessel marina is proposed to include 23 slips with full hook-ups for short-term overnight use (up to 30 days): 21 slips, 40-feet in length; and 2 slips, 57-feet in length. In addition, a 200-foot long dock will be provided along the outside edge of the marina. Also, a floating dock structure to support additional dinghy types of craft is proposed. What are the provisions for boats under

Draft Environmental Impact Report
Marina Park Project
Page 5 of 7

40-feet to dock in this marina? In addition, how many spaces are available for boats under 30-feet? Additionally, the Draft EIR states that .59 spaces per berth will be used to park the marina. How was this parking standard determined?

HAZARDS

The proposed project includes development on a sandy beach adjacent to open coastal waters/wetlands. This type of development can be subject to wave hazards, flooding and erosion. When new development is not appropriately sited and designed, property owners often seek some type of shoreline protective device to protect the property from such hazards. While shoreline protective devices afford some protection to the structures behind them, these protective devices can also cause erosion hazards elsewhere and often have adverse visual impacts. Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Accordingly, the Coastal Act requires that new development minimize exposure to hazards from erosion, wave attack, wave run-up, flooding, and other coastal hazards. In order to evaluate whether the project minimizes exposure to such hazards, the Commission will need a hazards analysis of site, prepared by an appropriately licensed professional (normally a licensed civil or geotechnical engineer with expertise in coastal processes). The analysis should cover whether the site and the proposed development could be subject to erosion, wave attack or wave run-up, the frequency of occurrence, consequences and options for siting or designing the project to avoid or minimize impacts over the life of the structure. Structural life is normally taken to be 75 to 100 years.

This hazards analysis should consider initially future shoreline changes due to erosion, sea level rise, up and down coast structures, changes in nourishment projects, and any other factors that currently influence shoreline conditions at your project site. This analysis would be developed from historic records, examination of aerial photographs, beach surveys, published studies of shoreline change, anecdotal information, site visits and other information and knowledge that the professional can bring to the project. The most landward shoreline position should be used to determine hazard from wave attack, wave run-up and flooding. The design wave conditions for this part of the analysis can be based on historic or wave modeling, including future increases in water level due to sea level rise. For much of the coast, the 1982/83 or 1988 storms were the 100-year event, and these too can be used for design conditions, with adjustments for future changes in sea level.

The purpose of this analysis is to determine whether future storms may erode the site or flood or damage the proposed project. If so, the analysis should provide some information on the probability or frequency of erosion, flooding and damage. Alternative siting or design options should also be considered that would avoid, minimize or mitigate potential adverse effects.

Please be sure the analysis includes site specific details (e.g. maps) showing the seasonal location of the mean high tide line and with both winter and summer profiles with respect to the proposed development and the anticipated inland reach of erosion, wave run-up, and flooding over the life of the structure. In addition, the analysis must make a definitive determination as to whether there is any anticipated need for a shoreline protective device over the life of the

Draft Environmental Impact Report
Marina Park Project
Page 6 of 7

proposed development. The analysis must also provide recommendations for the avoidance or minimization of hazards, if any, at the site.

BIOLOGY

The Draft EIR states that the project site contains several ornamental trees and shrubs that provide marginally suitable nesting habitat for migratory birds. The document also states that the California Least Tern does not breed or nest near the project site (the nearest California Least Tern nesting site is 2.5 miles west of the site) and that the Brown Pelican does not breed locally. While it appears that these two birds do not breed at the project site, what about other avian species? To determine this, please provide a history of nesting on the site by birds for the last 5-years.

PUBLIC ACCESS

American Legion

The Draft EIR states that public access to the project site will be via West Balboa Boulevard at 16th Street, and secondary access will be via 15th Street. Public access to the beach will be provided by walkways within the proposed park as well as an access provided along the western side of the proposed marina. Furthermore, 18th and 19th Street will continue to provide access to the public beach onsite. Adjacent to the project site and imbedded within the project site is the public tidelands leased to the American Legion. Public access along the waterfront through the area leased by the American Legion is not currently available. In order to provide continuous access to and along the bay, as currently proposed elsewhere in the project site, there should be access to and along the bay through the American Legion site. This would result in a continuous access to the bay along the bay from the western edge of the project site at 19th Street to eastern edge of the project site at 15th Street.

Parking

The Draft EIR states that due to the site's close proximity to the beach, it is important that the proposed onsite parking spaces provide adequate parking for the users of the proposed Marina Park facilities. Furthermore, it states that the proposed on-site parking lots are intended for the project only and are not intended to provide additional beach parking. Please clarify this statement as a public bay-front beach is adjacent and part of the proposed project. Public access is an essential part of the Coastal Act and any adverse impact to access to the beach raises concerns.

VISUAL IMPACTS

The project site is located within the Shoreline Height Limitation zone, which establishes a maximum height limit of 35-feet. The main buildings proposed on the project site are within the 35-foot height limit. However, the sail feature on the Balboa Center Complex will exceed the shoreline height limitation with a height of 35-feet, 6-inches and the Lighthouse will exceed it with a height of 73-feet. The City's Zoning Code provides for exceptions to this height limit, including vertical architectural features, such as towers, spires, cupolas and steeples. However, the proposed height of the Lighthouse seems to be excessive as it will exceed the height limit by

Draft Environmental Impact Report
Marina Park Project
Page 7 of 7

38-feet, more than double the allowable height. The height of such a structure would impact coastal views. The Draft EIR justifies the height of the structure since the width of the lighthouse ranges from 18-feet at the Sailing Center roof (the width of the lighthouse at the base was not stated) to 8-feet at the top of the lighthouse and since 930-linear feet of waterfront area will be opened up with the project. Nevertheless, the height of such a structure would adversely impact public views as no other structure in the area would be close to this proposed height. It may also set an adverse precedent. Thus, please provide alternatives to the proposed Lighthouse that would not have such an adverse impact on public views, such as staying within the allowable height limit, and justify your choice of the alternative that would be the least environmentally damaging alternative.

LAND USE

The Sailing Program Building is planned to include a café, serving breakfast, lunch, and dinner daily. Seating will be provided for 56 customers (32 inside and 24 outside). Will this restaurant be an ancillary use to the facilities proposed on site or will it serve as a destination restaurant? Is adequate parking included for this component?

OTHER AGENCY APPROVAL

U.S. Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Game (CDF&G) and State Lands Commission (SLC).

The Commission's regulations require that you submit evidence of review and approval of the proposed project from all local and state agencies for which a review and approval is required. If impacts to biological resources are occurring, a review and approval is typically required from the USFWS and/or the CDF&G. Evidence of these agencies review and approval (or verifications that no review is necessary) will need to be submitted with your application for a coastal permit.

Please also provide review of the project by the SLC.

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Marina Park Project. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a coastal development permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,



Ferrie Sy
Coastal Program Analyst II

Attachments: *Applicants for Shorefront Development*

Cc: State Clearinghouse

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-3200A1
Attachment 3

December 13, 1993

TO: Applicants for shorefront development

FROM: Commission staff

SUBJECT: Information needed before your application can be filed

To ensure that applicants have the legal ability to go forward with projects on or in close proximity to sovereign (i.e., state tide and submerged) lands or navigable waters (i.e., appear to be within the area encompassed by the Commission's "red line" maps), the Coastal Commission must have a written determination from the State Lands Commission whether it asserts that a development either encroaches onto lands seaward of the Mean High Tide Line (MHTL) or onto lands where the public easement in navigable water may exist. If such encroachments do occur, evidence must also be provided that the State Lands Commission has approved such encroachments.

The Coastal Commission has also become increasingly concerned about the effect on beaches of seawalls and other shore and bluff protective devices. Because protective devices may cause erosion, and may cover beach areas, public use and access along the shoreline can be adversely affected. Preventing or mitigating such loss of access and recreational opportunities is a principal responsibility of the Coastal Commission. The Commission is also concerned about shoreline issues such as impact of projects on adjacent properties, visual impacts of protective works, and allowing protective devices only if adverse effects are eliminated or sufficiently mitigated. Thus, the Commission requires detailed technical information regarding the proposed project's likely impact on the beaches and tidelands.

To assist the Commission staff in filing and processing an application for a development which is on or in close proximity to tidelands or navigable waters, please provide the following information:

1. Written determination from the State Lands Commission (SLC)

For a project that falls within the area delineated in the Commission's "redline maps," an application cannot be filed until the SLC determines whether it asserts that the development encroaches onto sovereign lands. A determination will also be required from the SLC whether it asserts that the development intrudes into an area covered by the public easement in navigable waters. It is the applicant's burden to establish that there is no encroachment. The SLC charges a fee for making this

"The "red line" corresponds to the "retained jurisdiction" line on post certification maps and on draft "post cert" maps available in the Commission's

determination, not to exceed its actual cost. Applicants should contact the State Lands Commission's Coastal Development Project Coordinator, 1807 13th Street, Sacramento, CA 95814, (916) 323-2694, for information on procedures and costs for obtaining boundary determinations. A coastal development permit application cannot be deemed complete for filing purposes until this SLC determination has been submitted to the Coastal Commission.

2. Project Plans

Plans for shoreline projects must be prepared or certified by a registered professional engineer with expertise in shoreline processes. Normally, this means a civil engineer or engineering geologist. On occasion, this can be a structural engineer or soils engineer if he/she has experience in coastal engineering.

The submitted plans for all projects should show the project footprint in relation to the applicant's property boundaries. The plans should also show the locations of all MHTLs identified through surveys and the location of any boundaries in the immediate project vicinity to which the State Lands Commission has agreed.

If the project extends onto an adjoining property, the applicant must show a legal right to use the adjoining property, and the adjoining owner must be invited to apply as a co-applicant.

3. Information needs for protective works

In the case of shoreline protective works, a permanent surveyed benchmark should be shown on the plans and established on the site for future project maintenance and monitoring. This benchmark should be in relation to the standard of MVD (National Geodetic Vertical Datum). A map showing beach contours at 1 foot intervals should also be provided. Construction access should be identified with any special considerations noted.

A geotechnical report must be prepared by a registered professional engineer or engineering geologist for all shoreline protective works. For small projects (for example, adding some 500 cu. yds. of rock to an existing rip-rap wall above the toe and the beach) a short letter report may be acceptable. If a prior thorough investigation has been done, only an update may be necessary. For most shoreline projects, however, a full report that is prepared according to the standards set by the Division of Mines and Geology, (see Note #44, Guidelines for Preparing Engineering Geology Reports; copy available upon request) will be required.

Other information needed for protective works include the following:

- Design wave height and design constraints, and methodology used for such calculations

-3-

- Maximum expected wave height
- Frequency of overtopping and verification that the structure is designed to withstand storms comparable to the winter storms of 1982-83
- Normal and Maximum tidal ranges
- Erosion rate with/without protection device
- Effect of structure on adjoining property
- Potential for, and effect of, scouring at base
- Design life of structure and maintenance requirements
- Quantification of loss of sand to the beach because of the amount of the armoring of a bluff face
- Alternatives to the project and to the chosen design. Project alternatives include, but are not limited to: no project, relocation of the threatened structure, beach nourishment, etc.
- Effect of structure upon public access to and along adjacent public tidelands
- Locations of any required staging areas and the technique of construction
- In some cases, provision of a monitoring program for the life of the project will be required. Such a program should evaluate the effectiveness of the structure, and the expected impacts of the structure on nearby beach areas (i.e., change in beach profile), and proposed methods for dealing with those impacts.

Applicants should also be aware that due to the impacts of a protective device on beaches, the Commission may require some type of mitigation if adverse impacts are expected. One typical type of mitigation condition is a requirement for an offer to dedicate a lateral public access easement for that portion of the beach seaward of the approved protective device. But there may be other mitigation requirements such as contribution to programs that provide for nourishment of beaches.

If you have any questions about the content of this informational memo, or the Commission procedures in general, please don't hesitate to contact your nearest Coastal Commission office.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Phone: (562) 590-5071
Fax: (562) 590-5084

A2
Page 1 of 8



Fax

To: ROSALIND UNG

From: FERNIE SY

Fax: (949) 644-3250

Pages:

Phone:

Date: 4/13/09

Re: SCH # 2008051096

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

The information contained in this facsimile is confidential and is property of the State of California. If you have received this information in error, please notify the sender and return the hardcopy to the address listed above.

• Comments:

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



April 13, 2009

A2
Page 2 of 8

Rosalinh Ung, Associate Planner
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915

**Re: Marina Park Project
Draft Environmental Impact Report (SCH# 2008051096)**

Dear Ms. Ung,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Marina Park Project. According to the Draft Environmental Impact Report, the proposed project will consist of construction of the Balboa Center Complex consisting of a Multi-Purpose Building and Sailing Program Building, a Girl Scout House, a marine services building, parking areas, a park, beach and marina basin on an existing public beach fronting (along Newport Bay) parcel that currently supports 57 mobile homes, the Neva B. Thomas Girl Scout House, the City of Newport Beach Community Center, a 21-stall metered parking lot, Las Arenas Park, a Southern California Edison parcel, Veteran's Park, an alley, a sidewalk, the 19th Street public restroom, a beach, and a portion of Newport Bay.

The proposed project is located within the coastal zone in the City of Newport Beach. The proposed development will require a coastal development permit from the California Coastal Commission.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to dredge and fill of open coastal waters/wetlands, water quality, hazards, biology, public access, visual impacts and consistency with the City of Newport Beach Land Use Plan (LUP).

Below are the comments by Commission staff on the Draft Environmental Impact Report.

WETLANDS

Dredging and Fill

Based on the Draft EIR, the project site includes approximately 1.20 acres of intertidal coastal wetland and approximately 0.10 acres of subtidal coastal wetland. Also, the project includes approximately 62,000 cubic yards of dredging and states that a total of eight (8) preliminary candidates have been identified as potential sand disposal locations (The Draft EIR fails to indicate the final chosen site). In addition, the project will result in the onsite loss of 0.9 acres of supra-tidal (terrestrial) non-marine habitat and 0.66 acres of sandy intertidal habitat for the onsite creation of 1.56 acres of shallow water habitat. The loss of 0.66 acres of sandy habitat

A2-1

Draft Environmental Impact Report
Marina Park Project
Page 2 of 7

A2
Page 3 of 8

would become shallow water habitat. Also, the proposed project will result in the depth modification of 0.1 acres of onsite shallow water habitat and 0.72 acre of offsite shallow water habitat.

The proposed project would result in the dredging and fill of open coastal waters/wetlands. Section 30108.2 of the Coastal Act defines "Fill" as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the dredging and fill of wetlands and open coastal waters to seven uses and it appears that the proposed project does result in both "Dredging" and "Fill" of open coastal waters. Projects that propose the dredging and fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed dredging and fill would qualify as allowable under the Coastal Act. Also, clarification should be made on whether or not the delineation of wetlands and coastal waters was based on Coastal Act standards or another agency's (i.e. Army Corps of Engineers) standard. If the habitat delineation and calculation of fill was not determined by Coastal Act definitions, then a revised biological analysis regarding the proposed fill should be conducted using the Coastal Act definitions. The City's Coastal Land Use Plan contains more description about wetland delineation procedures for Coastal Act purposes.

A2-1
CONT

Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

Typically, the Commission prefers on-site mitigation to off-site mitigation. The Commission typically requires that mitigation be done at a 4:1 ratio. In addition, the applicant must be fully responsible for undertaking the mitigation. In this way, the Commission is assured that the mitigation will occur and it is clear who is responsible for undertaking and managing the mitigation. The EIR should discuss the mitigation that would be proposed. However, every effort should be made to choose an alternative that would be the least environmentally damaging, preferably avoiding coastal water/wetland impacts.

A2-2

Sand Compatibility Report

As stated previously, the project includes dredging and the deposition of sand upon eight (8) potential sand disposal locations. These sand disposal locations were not identified, nor was the final disposal location identified. Staff assumes that a potential location would be the public beach found on the project site. Thus, please first identify this location and then provide a sand compatibility report for this location. Please also have the U.S. Army Corps of Engineers (USACE) and Environmental Protection Agency (EPA) review the beach sampling to characterize the existing grain for compatibility with the borrow source material.

A2-3

MARINA

The proposed marina will require construction of a new groin wall and bulkhead walls. This raises concerns regarding fill of open coastal waters/wetlands, effect on sand supply and coastal erosion. Is a new marina necessary at this location? In the Draft EIR, one of the identified project alternatives is "The No Marina Alternative." The document states that implementation of this alternative would eliminate the potential significant impacts on sandy

A2-4

Draft Environmental Impact Report
Marina Park Project
Page 3 of 7

A2
Page 4 of 8

Intertidal habitat; as well as, the long-term water quality impacts associated with flushing of the proposed marina (to be discussed later). However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

A2-4
CONT

While staff has serious concerns with the proposed marina, further information regarding the proposed marina is still necessary if you wish to proceed with the project as submitted:

Groin Wall

The Draft EIR states that the proposed marina will be enclosed by a cement groin and include eighteen (18) pilings that will create hard bottom habitat. Section 30235 of the Coastal Act mandates that groin walls must be permitted in certain specified conditions. The Commission is concerned that this type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

A2-5

Additionally, Section 30233 of the Coastal Act limits the filling of coastal waters to seven allowable uses and requires that the least environmentally damaging feasible alternative is chosen and that feasible mitigation measures be provided to minimize adverse environmental effects. Sections 30230 and 30231 of the Coastal Act mandate that the quality of coastal waters and biological productivity be maintained.

A2-6

Projects that propose the fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed fill for the groin wall would qualify as allowable under the Coastal Act. Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

The document does not provide any studies that substantiate the need for the groin wall nor does it provide information on how it may impact coastal shoreline processes. Due to this, an engineering analysis prepared by a qualified engineering professional with expertise in coastal processes is required. Specifically, staff will need an evaluation of the proposed project's impact on sand supply, erosion rates, and adjoining property and determination. Also, an evaluation of whether the proposed project will require monitoring to assure that shoreline processes are not adversely impacted is required. In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the groin wall. Another possible alternative could be construction of the marina without the groin wall.

A2-7

Bulkhead

The Draft EIR states that the proposed marina will include new bulkheads. Section 30235 of the Coastal Act mandates that new bulkheads may only be constructed under specific circumstances, such as to protect existing structures. The Commission is concerned that this

A2-8

Draft Environmental Impact Report
Marina Park Project
Page 4 of 7

A2
Page 5 of 8

type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

A2-8
CONT

The materials submitted with your application do not substantiate the need to construct new bulkheads. Thus, please provide a study prepared by an appropriately licensed professional (i.e. engineer with expertise in coastal processes), which substantiates the need to construct new bulkheads. At minimum, the study must answer the following questions: Why must the proposed bulkheads be constructed?; How will the proposed bulkheads mitigate the circumstances, which requires the bulkheads to be constructed?; How will the proposed bulkheads affect coastal processes, including impacts upon shoreline sand supply?; Will the proposed bulkheads be connected to any existing bulkheads located adjacent to the project site? In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the bulkheads. Please reference the attached memorandum titled *Applicants for Shorefront Development*.

A2-9

Water Quality

The Regional Water Quality Control Board (RWQCB) has identified Lower Newport Bay as an impaired water body. As stated in the Draft EIR, implementation of the proposed marina would create a condition where there would be inadequate tidal flushing within the proposed marina and thus contribute to the impaired water body since long-term water quality within the proposed marina will be governed by its flushing capacity. Also stated in the Draft ER, a water quality analyses was conducted that indicated that tidal flushing rates would be poor and that flushing capacities are well below the EPA guideline. It states that inadequate tidal flushing in the marina basin would result in lowered dissolved oxygen levels, higher water temperatures, poor water transparency, potential eutrophication, and increased sedimentation. In addition, poor tidal flushing would also exacerbate water quality issues in this region of the bay since the tidal flushing rate in this part of the harbor is already poor outside the proposed marina in front of the swimming beach and the American Legion Post 291 Marina. Poor tidal flushing within the marina would result in a significant, long-term impact on Newport harbor water quality and would severely limit the colonization of marina habitats by plants, invertebrates, and fish. In order to deal with the adverse long-term water quality impacts due to poor tidal conditions, a mitigation measure consisting of installing mechanical devices within the marina basin design to enhance the movement and mixing of water within the basin has been proposed. One of the identified project alternatives in the Draft EIR is "The No Marina Alternative." The Draft EIR states that implementation of this alternative would eliminate the long-term water quality impacts associated with flushing of the project marina. However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

A2-10

Slips

The vessel marina is proposed to include 23 slips with full hook-ups for short-term overnight use (up to 30 days): 21 slips, 40-feet in length; and 2 slips, 57-feet in length. In addition, a 200-foot long dock will be provided along the outside edge of the marina. Also, a floating dock structure to support additional dinghy types of craft is proposed. What are the provisions for boats under

A2-11

Draft Environmental Impact Report
Marina Park Project
Page 5 of 7A2
Page 6 of 8

40-feet to dock in this marina? In addition, how many spaces are available for boats under 30-feet? Additionally, the Draft EIR states that .59 spaces per berth will be used to park the marina. How was this parking standard determined?

A2-11
CONT

HAZARDS

The proposed project includes development on a sandy beach adjacent to open coastal waters/wetlands. This type of development can be subject to wave hazards, flooding and erosion. When new development is not appropriately sited and designed, property owners often seek some type of shoreline protective device to protect the property from such hazards. While shoreline protective devices afford some protection to the structures behind them, these protective devices can also cause erosion hazards elsewhere and often have adverse visual impacts. Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

A2-12

Accordingly, the Coastal Act requires that new development minimize exposure to hazards from erosion, wave attack, wave run-up, flooding, and other coastal hazards. In order to evaluate whether the project minimizes exposure to such hazards, the Commission will need a hazards analysis of site, prepared by an appropriately licensed professional (normally a licensed civil or geotechnical engineer with expertise in coastal processes). The analysis should cover whether the site and the proposed development could be subject to erosion, wave attack or wave run-up, the frequency of occurrence, consequences and options for siting or designing the project to avoid or minimize impacts over the life of the structure. Structural life is normally taken to be 75 to 100 years.

This hazards analysis should consider initially future shoreline changes due to erosion, sea level rise, up and down coast structures, changes in nourishment projects, and any other factors that currently influence shoreline conditions at your project site. This analysis would be developed from historic records, examination of aerial photographs, beach surveys, published studies of shoreline change, anecdotal information, site visits and other information and knowledge that the professional can bring to the project. The most landward shoreline position should be used to determine hazard from wave attack, wave run-up and flooding. The design wave conditions for this part of the analysis can be based on historic or wave modeling, including future increases in water level due to sea level rise. For much of the coast, the 1982/83 or 1988 storms were the 100-year event, and these too can be used for design conditions, with adjustments for future changes in sea level.

The purpose of this analysis is to determine whether future storms may erode the site or flood or damage the proposed project. If so, the analysis should provide some information on the probability or frequency of erosion, flooding and damage. Alternative siting or design options should also be considered that would avoid, minimize or mitigate potential adverse effects.

Please be sure the analysis includes site specific details (e.g. maps) showing the seasonal location of the mean high tide line and with both winter and summer profiles with respect to the proposed development and the anticipated inland reach of erosion, wave run-up, and flooding over the life of the structure. In addition, the analysis must make a definitive determination as to whether there is any anticipated need for a shoreline protective device over the life of the

Draft Environmental Impact Report
Marina Park Project
Page 6 of 7

A2
Page 7 of 8

proposed development. The analysis must also provide recommendations for the avoidance or minimization of hazards, if any, at the site.

A2-12
CONT

BIOLOGY

The Draft EIR states that the project site contains several ornamental trees and shrubs that provide marginally suitable nesting habitat for migratory birds. The document also states that the California Least Tern does not breed or nest near the project site (the nearest California Least Tern nesting site is 2.5 miles west of the site) and that the Brown Pelican does not breed locally. While it appears that these two birds do not breed at the project site, what about other avian species? To determine this, please provide a history of nesting on the site by birds for the last 5-years.

A2-13

PUBLIC ACCESS

American Legion

The Draft EIR states that public access to the project site will be via West Balboa Boulevard at 16th Street, and secondary access will be via 15th Street. Public access to the beach will be provided by walkways within the proposed park as well as an access provided along the western side of the proposed marina. Furthermore, 18th and 19th Street will continue to provide access to the public beach onsite. Adjacent to the project site and imbedded within the project site is the public tidelands leased to the American Legion. Public access along the waterfront through the area leased by the American Legion is not currently available. In order to provide continuous access to and along the bay, as currently proposed elsewhere in the project site, there should be access to and along the bay through the American Legion site. This would result in a continuous access to the bay along the bay from the western edge of the project site at 19th Street to eastern edge of the project site at 15th Street.

A2-14

Parking

The Draft EIR states that due to the site's close proximity to the beach, it is important that the proposed onsite parking spaces provide adequate parking for the users of the proposed Marina Park facilities. Furthermore, it states that the proposed on-site parking lots are intended for the project only and are not intended to provide additional beach parking. Please clarify this statement as a public bay-front beach is adjacent and part of the proposed project. Public access is an essential part of the Coastal Act and any adverse impact to access to the beach raises concerns.

A2-15

VISUAL IMPACTS

The project site is located within the Shoreline Height Limitation zone, which establishes a maximum height limit of 35-feet. The main buildings proposed on the project site are within the 35-foot height limit. However, the sail feature on the Balboa Center Complex will exceed the shoreline height limitation with a height of 35-feet, 6-inches and the Lighthouse will exceed it with a height of 73-feet. The City's Zoning Code provides for exceptions to this height limit, including vertical architectural features, such as towers, spires, cupolas and steeples. However, the proposed height of the Lighthouse seems to be excessive as it will exceed the height limit by

A2-16

Draft Environmental Impact Report
Marina Park Project
Page 7 of 7A2
Page 8 of 8

38-feet, more than double the allowable height. The height of such a structure would impact coastal views. The Draft EIR justifies the height of the structure since the width of the lighthouse ranges from 18-feet at the Sailing Center roof (the width of the lighthouse at the base was not stated) to 8-feet at the top of the lighthouse and since 930-linear feet of waterfront area will be opened up with the project. Nevertheless, the height of such a structure would adversely impact public views as no other structure in the area would be close to this proposed height. It may also set an adverse precedent. Thus, please provide alternatives to the proposed Lighthouse that would not have such an adverse impact on public views, such as staying within the allowable height limit, and justify your choice of the alternative that would be the least environmentally damaging alternative.

A2-16
CONT

LAND USE

The Sailing Program Building is planned to include a café, serving breakfast, lunch, and dinner daily. Seating will be provided for 56 customers (32 inside and 24 outside). Will this restaurant be an ancillary use to the facilities proposed on site or will it serve as a destination restaurant? Is adequate parking included for this component?

A2-17

OTHER AGENCY APPROVAL

U.S. Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Game (CDF&G) and State Lands Commission (SLC).

The Commission's regulations require that you submit evidence of review and approval of the proposed project from all local and state agencies for which a review and approval is required. If impacts to biological resources are occurring, a review and approval is typically required from the USFWS and/or the CDF&G. Evidence of these agencies review and approval (or verifications that no review is necessary) will need to be submitted with your application for a coastal permit.

A2-18

Please also provide review of the project by the SLC.

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Marina Park Project. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a coastal development permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,



Fernie Sy
Coastal Program Analyst II

Attachments: *Applicants for Shorefront Development*

Cc: State Clearinghouse

DEPARTMENT OF TRANSPORTATION

District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
Tel: (949) 724-2267
Fax: (949) 724-2592

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A3
Page 1 of 1



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MAR 23 2009

March 19, 2009

CITY OF NEWPORT BEACH

Mr. Rosalinh Ung
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

File: IGR/CEQA
SCH#: 2008051096
Log #: 2071A
PCH, SR-55

Subject: Marina Park

Dear Ms. Ung,

Thank you for the opportunity to review and comment on **Draft Environmental Impact Report for the Marina Park Project**. The public park will provide for passive and active areas. The passive areas include an open lawn area and a water feature. The active areas will include a children's play area and basketball courts. The public short-term visiting vessel marina is proposed to accommodate visiting vessels for up to 30 days. The Balboa Center Complex (BCC) will include rooms for educational classes as well as community events. The BCC will have a restaurant situated on the second story and will include areas for marina rentals as well as room for sailing classes. There are two tennis courts proposed on the eastern portion of the site adjacent to 15th Street. In addition, an existing bathroom on the public beach adjacent to 19th Street is proposed to be renovated or reconstructed but the size of the bathroom facility will remain the same. The nearest State route to the project site is Pacific Coast Highway and SR-55.

A3-1

The California Department of Transportation (Department), District 12 is a commenting agency on this project and has no comment at this time. However, in the event of any activity within the Department's right-of-way, an encroachment permit will be required.

Please continue to keep us informed of this project and any future developments, which could potentially, impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,

Chris Herre, Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research



Linda S. Adams
Secretary for
Environmental Protection

Department of Toxic Substances Control

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630



Arnold Schwarzenegger
Governor

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PLANNING DEPARTMENT

April 3, 2009

APR 06 2009

CITY OF NEWPORT BEACH

Ms. Rosalinh Ung
Associate Planner
Planning Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658
rung@city.newport-beach.ca.us

NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR MARINA PARK PROJECT (SCH # 2008051096), CITY OF NEWPORT BEACH, ORANGE COUNTY

Dear Ms. Ung:

The Department of Toxic Substances Control (DTSC) has received your submitted Draft Environmental Impact Report (DEIR) for the above-mentioned project. The following project description is stated in your document: "The Marina Park project (Marina Park) site is located in the City of Newport Beach, Orange County, California. Specifically, the project site is located on the Balboa Peninsula, along Balboa Boulevard, south of a public beach and the Newport Bay, west of 15th Street and east of 18th Street. The proposed project includes the Multi-Purpose Building at the Balboa Center Complex, Sailing Program Building at the Balboa Center Complex, the Girl Scout House, marina services building, parking areas, park, beach, and a marina basin. Predominant land uses in the vicinity of the site are residential, recreational, and commercial. The existing site encompasses approximately 10.45 acres and is built up in nature with residential, community service center, public tennis courts, beach access, and surface parking lot uses." DTSC has the following comments:

- 1) The EIR should identify the current or historic uses at the project site that may have resulted in a release of hazardous wastes/substances, and any known or potentially contaminated sites within the proposed Project area. For all identified sites, the EIR should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the pertinent regulatory agencies:
- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

A4-1

Ms. Rosalinh Ung
April 3, 2009
Page 2 of 4

- Envirostor: A Database primarily used by the California Department of Toxic Substances Control, at Envirostor.dtsc.ca.gov.
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

A4-1
CONT

2) The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC can enter an oversight agreement in order to review such documents. Please see comment No. 11 below for more information.

A4-2

3) All environmental investigations, sampling and/or remediation for the site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found should be clearly summarized in a table.

A4-3

4) Proper investigation, sampling and remedial actions overseen by the respective regulatory agencies, if necessary, should be conducted at the site prior to the new development or any construction. All closure, certification or remediation approval reports by these agencies should be included in the EIR.

A4-4

Ms. Rosalinh Ung
April 3, 2009
Page 3 of 4

- 5) If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies. A4-5
- 6) Project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination. A4-6
- 7) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. If it is found necessary, a study of the site and a health risk assessment overseen and approved by the appropriate government agency and a qualified health risk assessor should be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment. A4-7
- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA. A4-8
- 9) If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented. A4-9
- 10) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project. A4-10

Ms. Rosalinh Ung
April 3, 2009
Page 4 of 4

11)DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies which would not be responsible parties under CERCLA, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

A4-11

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov or by phone at (714) 484-5491.

Sincerely,



Greg Holmes
Unit Chief

Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov.

CEQA Tracking Center
Department of Toxic Substances Control
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CEQA#2514



California Regional Water Quality Control Board Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

April 17, 2009

Rosalinh Ung
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

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APR 20 2009

CITY OF NEWPORT BEACH

DRAFT ENVIRONMENTAL IMPACT REPORT, MARINA PARK, BALBOA PENINSULA, CITY OF NEWPORT BEACH, SCH# 2008051096

Dear Ms. Ung:

Staff of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) have reviewed the Draft Environmental Impact Report (DEIR) for the proposed Marina Park (Project), to be located in the City of Newport Beach (City) between Balboa Boulevard and Lower Newport Bay (Bay), and between 15th and 18th Streets. Regional Board staff commented (June 15, 2004 letter) when this recreational facility project was proposed as "Marinapark Resort" and included subterranean parking and a hotel.

The 10.45-acre Project (p.2-1, DEIR Exhibit 3-3) includes a 1.67-acre marina basin dredged into the existing 1-acre beach¹ to accommodate 23 slips and utility hook-ups for visiting vessels (up to 30-day terms). An existing mobile home park will be removed and replaced. Several recreational buildings (or revisions to existing ones) will be constructed, as will food service sites, a play area for children, restrooms, and outdoor sports courts/open space.

We believe that the DEIR (including Appendix H, the Water Quality Management Plan or WQMP) should incorporate the following comments in order for the project to best protect water quality standards (water quality objectives and beneficial uses) contained in the Water Quality Control Plan for the Santa Ana River Basin (Region 8 Basin Plan):

Marina Dredging and 401 Certification

1. There is no discussion on p. 3-10 of the method of initial dredging or maintenance dredging or, with the exception of sediment, of controlling water quality pollutants that may arise from these dredging activities. P. 5.7-7 states that a silt curtain will be placed within the Bay to contain suspended sediment, but there is no specific description or diagram indicating the curtain's intended position. For example, it has been our experience that silt curtains have been successfully deployed around an entire work site, and also when closely surrounding the dredge.

¹ Located immediately west of the existing American Legion Post 291 Marina, which is not part of the Project (Exhibit 3-3).

2. Two errors on p. 5.7-7, regarding Basin Plan natural turbidity maximum increases, would be corrected by insertion of the objective itself: for 0-50 Nephelometric Turbidity Units (NTU), 20 percent; for 50-100 NTU, 10 NTU (not a percentage); and for greater than 100 NTU, 10 percent. A5-2
3. The dredged spoils disposal site(s) are not indicated as anticipated on Exhibit 3-4 nor otherwise specified. The EIR should reflect that disposal locations and any monitoring program have been selected and will be cleared with the U.S. Army Corps of Engineers (USACE) and the California Coastal Commission. A5-3
4. The DEIR states that approximately 62,000 cubic yards will be dredged from 1.3 acres of combined subtidal/intertidal coastal wetland (plus a portion of beach) and that a Clean Water Act Section 401 Water Quality Standards Certification (Certification) will be required as a prerequisite to a Section 404 permit issued by the USACE. Mitigation measures for impacts to the water quality standards of these dredged areas should be proposed in EIR Table 2-1, MM 5.3-B.1., on p. 2-9 of the Executive Summary. Since this mitigation will be necessary to obtain Certification for the Project from the Regional Board, this office should be cited among the permitting agencies that must approve mitigation. Certification will require a baseline functional assessment of the wetlands impacted, conducted according to the California Rapid Assessment Manual or other appropriate protocol. Certifications will also require subsequent functional assessments of wetland mitigation areas and standardized reporting of assessment findings. Baseline assessments should be cited and summarized in the EIR and included as an appendix, and the need for subsequent assessments of the mitigation site(s) should be recognized. Because of this, early Certification consultation with our office is strongly encouraged. A5-4
5. DEIR p.2-9 and 5.3-19 indicate that a loss of 0.66 acre of sandy intertidal habitat and 0.9 acre of terrestrial non-marine habitat would be offset by ultimate construction of the 1.67-acre marina, which would provide "an overall net gain of 0.9 acre" (0.11 acre?) of additional "wetland habitat (shallow water habitat)." P.5.3-19 recognizes "as significant" the conversion of this specified acreage of intertidal wetland to marina-bottom. Given the Clean Water Act's directive that no net loss of wetlands occur, we do not consider that the Project, as proposed, provides a net gain of wetlands or will replace the ecological functionality (cyclical aeration and saturation) of the lost intertidal/beach area and its water quality standards (beneficial uses)². A5-5

Total Maximum Daily Loads

6. The DEIR recognizes (p.5.7-2) that San Diego Creek and Upper/Lower Newport Bay have been listed, pursuant to Clean Water Act Section 303(d), as impaired by various pollutants and have had various Total Maximum Daily Loads (TMDLs) adopted. The following group of adopted and anticipated TMDLs should be incorporated into the EIR: A5-6

² Applicable beneficial uses for Lower Newport Bay: Marine Habitat, Wildlife Habitat, or Water Contact Recreation, or Non-Contact Water Recreation.

Siltation (sediments) and nutrient TMDLs for Lower Newport Bay, Upper Newport Bay, San Diego Creek Reach 1, and San Diego Creek Reach 2 (see http://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/index.shtml)

A fecal coliform (pathogen) TMDL has been adopted for Lower Newport Bay and Upper Newport Bay. A diazinon/chlorpyrifos pesticide TMDL has been adopted for Upper Newport Bay and San Diego Creek, Reach 1.

TMDLs for toxic pollutants, including selenium, were promulgated by the U.S. Environmental Protection Agency in June 2002. Future TMDLs are anticipated for selenium and metals (Lower and Upper Newport Bay), selenium and fecal coliform (San Diego Creek Reach 1), and specified metals (San Diego Creek Reach 2).

TMDLs for organochlorine compounds (particularly DDT, chlordane, and PCBs) are anticipated for all four of these water bodies (as well as Newport Bay's Rhine Channel), with toxaphene also targeted in San Diego Creek Reaches 1 and 2.

BMPs proposed by the Project that will contribute to compliance with TMDLs specific to Lower Newport Bay should be identified in the project's WQMP and remaining EIR.

A5-6
CONT

Dewatering Permitting

7. To augment basic DEIR references to the Regional Board's dewatering permit (p.3-17, where groundwater dewatering is necessary for projects that discharge into storm drains and natural drainages of the San Diego Creek watershed (including Lower Newport Bay), these discharges require coverage under Order No. R8-2004-0021 (amended by R8-2006-0065), NPDES No. CAG998002, "General Waste Discharge Requirements for Short-Term Groundwater-Related Discharges and De Minimus Wastewater Discharges to Surface Waters Within the San Diego Creek/Newport Bay Watershed." This general permit establishes a waste discharge management program applicable to the project area, for the purpose of reducing selenium, sediment, nutrients, and other pollutants. This permit is available at:
http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders
Contact this office's Permitting Section staff at (951) 782-4130 for additional information.

A5-7

Stormwater Permitting

8. The following comments pertain to the DEIR's discussion of the Orange County Drainage Area Management Plan (DAMP), the Marina Park Coastal Engineering Study, stormwater discharge permitting, and the implementation of the WQMP required by "Waste Discharge Requirements for Orange County (NPDES Permit No. CAS618030, Order No. R8-2002-0010, Areawide Urban Storm Water Runoff Permit for the County of Orange, Orange County Flood Control District, and Incorporated Cities of Orange County within the Santa Ana Region," also known as the Orange County municipal separate storm sewer system, or "Orange County MS4," permit:

A5-8

The Orange County MS4 permit is currently undergoing revision, and adoption of a revised permit is expected this calendar year. The EIR should reflect that construction and operation of the project may be affected by new requirements included in the revised MS4 permit. Information concerning revision of the Orange County MS4 permit is on this office's web site.

A5-8
CONT

The State Water Resources Control Board's Water Quality Order No. 99-08-DWQ, "General Permit for Storm Water Discharges Associated with Construction Activity" is currently under revision. Information regarding the draft general permit may be found at http://www.waterboards.ca.gov/water_issues/programs/stormwater

A5-9

The DEIR prescribes three primary Best Management Practices (BMPs) for stormwater capture and treatment within the Project: pervious pavement, landscaped biocells, and one bioswale. Locations of the latter two BMPs should be shown on Exhibit 3-3.

A5-10

Hydrodynamic separator units are mentioned among potential treatment control BMPs considered but are not chosen for the Project. Since trash and litter originating in inland waters and found on coastal beaches is becoming increasingly problematic, treatment controls that capture litter in storm water runoff originating on or passing through the site should be considered for the project, incorporated into the project's WQMP as appropriate, and reported in the EIR.

A5-11

The EIR must include discussions regarding how the proposed marina facilities will be designed and operated to prevent the discharge of non-point source pollutants from moored vessels into Newport Bay.

A5-12

If you have any questions, please contact Glenn Robertson at (951) 782-3259, grobertson@waterboards.ca.gov, or me at (951) 782-3234, or madelson@waterboards.ca.gov

Sincerely,



Mark G. Adelson, Chief
Regional Planning Programs Section

Cc: State Clearinghouse
U.S. Army Corps of Engineers, Los Angeles – Stephanie Hall
California Coastal Commission - Fernie Sy
California Department of Fish and Game, Los Alamitos office - Erinn Wilson
U.S. Fish and Wildlife Service, Carlsbad – William Miller

X:Groberts on Magnolia/Data/CEQA/CEQA Responses/ DEIR- City of Newport Beach- Marina Park-Revised2009.doc



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

APR 13 2009

RECEIVED BY
PLANNING DEPARTMENT

APR 16 2009

CITY OF NEWPORT BEACH

Rosalinh Ung
Planning Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658

Dear Ms. Ung:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the City of Newport Beach Planning Department's Draft Environmental Impact Report (DEIR) for the Marina Park Project to redevelop approximately 10.45 acres into a public park area for various uses, including a new public short-term visiting vessel marina, in the southwestern portion of the City of Newport Beach on the Balboa Peninsula in Orange County, California. NMFS offers the following comments pursuant to the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Marine Mammal Protection Act (MMPA).

A6-1

Given that the proposed activity will likely require a federal permit from the U.S. Army Corps of Engineers (Corps) pursuant to Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act, NMFS is providing comments on the DEIR in anticipation of the EFH consultation process this permit would require. NMFS also intends to submit comments to the Corps pursuant to our responsibilities under the Fish and Wildlife Coordination Act (FWCA). We believe that coordination between NMFS and the City of Newport Beach at this stage of project planning would facilitate a more effective and streamlined EFH and FWCA consultation process between the Corps and NMFS. NMFS is also providing comments on the DEIR given the proximity of this project to marine mammals in the area pursuant to our responsibilities under the MMPA.

Proposed Project

The proposed project would involve the construction of a public short-term visiting vessel marina on the far northeast boundary of the site. The visiting vessel marina is proposed to include 23 slips with full utility hook-ups for shore power and water and accommodate visiting vessels for up to 30 days. Concrete floating docks will be used throughout the marina, and a 200-foot-long dock will be included along the outer edge. Construction of the marina will require landside excavation, accomplished by dozers, skip loaders, trucks and other small equipment; a groin wall will also be built around the marina. Dredging of approximately 62,000 cubic yards of bayfloor sediments by either clam shell or hydraulic dredge to a depth of -12 MLLW will also be required. Finally, 18

A6-2



concrete pilings will be driven into the sediments to secure the docks. The beach compatible material would be disposed of at one of eight potential sand disposal locations near the project site.

A6-2
CONT

Action Area

The proposed project occurs in EFH for various federally managed fish species within the Pacific Groundfish and Coastal Pelagics Fishery Management Plans (FMPs). In addition, the project occurs within estuarine habitat, and in the vicinity of seagrass habitats, which are considered habitat areas of particular concern (HAPC) for various federally managed fish species within the Pacific Groundfish and Coastal Pelagic Species FMP. HAPC are described in the regulations as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPC are not afforded any additional regulatory protection under MSA; however, federally permitted projects with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process.

A6-3

EFH Comments

Based on information provided in the DEIR and the Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc., NMFS believes that the proposed action would adversely affect EFH for various federally managed species within the Pacific Groundfish and Coastal Pelagics FMPs. Dredging, pile installation, and long-term operation of the marina constitute the main activities that would adversely affect EFH.

A6-4

The adverse effects of dredging on EFH may include: 1) direct removal/burial of organisms; 2) turbidity/siltation effects, including light attenuation from turbidity; 3) contaminant release and uptake, including nutrients, metals, and organics; 4) release of oxygen consuming substances; 5) entrainment; 6) noise disturbances; and 7) alteration to hydrodynamic regimes and physical habitat. The dredging would impact approximately 0.66 acres in Newport Harbor.

Another potential project concern is the spread of the invasive alga *Caulerpa taxifolia* from project activities. As you may be aware, this alga has been introduced to our coastline. Evidence of harm that can ensue as a result of an uncontrolled spread of the alga has already been seen in the Mediterranean Sea where it has destroyed local ecosystems, impacted commercial fishing areas, and affected coastal navigation and recreational opportunities. Although it is not known to be present within Newport Harbor, it has been detected in two other locations in Southern California. If the invasive alga is present within the project area, the dredging activities would adversely affect EFH by promoting its spread and increasing its negative ecosystem impacts.

A6-5

The disposal of dredge material in estuarine and/or nearshore habitats can cause adverse effects to EFH, including direct burial of marine organisms, turbidity, or alteration of

A6-6

hydrodynamic regimes and physical habitat. Moreover, although the "Marine Biological Impact Assessment" concludes that the dredge material is suitable for beach disposal with regard to particle size and contaminant concentrations, it also refers to the well-documented presence of elevated levels of contaminants throughout Newport Bay, including nearby Rhine Channel. Therefore, in order to accurately assess any potential impacts from the disposal of this material, NMFS will require more detailed information regarding the disposal site. Specifically, the timing, location and depth of disposal, any sensitive habitats nearby, and any measures for dealing with contaminated sediments should be described.

A6-6
CONT

Pile driving activities have the potential to adversely impact EFH through modification of the substrate, disturbance of benthic communities, slight increases in turbidity, and sound attenuation. The DEIR and associated Marine Biological Impact Assessment refer to the installation of concrete pilings, but there is no information provided regarding the diameter of these pilings or the installation method (aside from the statement "18 cement piles will be driven into the sediments to secure the docks"). Given the small project area and the lack of sensitive habitat, any adverse impacts to EFH associated with this activity are expected to be no more than minimal. However, the additional information listed above will be required to make this determination.

A6-7

Long-term operation of the marina would adversely affect EFH as a result of poor tidal flushing and the discharge of various pollutants associated with vessel and marina operation and maintenance. Insufficient tidal flushing would be detrimental to marine organisms by causing a decrease in dissolved oxygen levels and water transparency, and an increase in water temperature and sedimentation. It can also lead to eutrophication, a process in which excessive amounts of nutrients introduced into a system induce abundant growth of algae and other organisms, the decay of which depletes oxygen levels. The Marine Biological Impact Assessment states that maintenance dredging may also be required as a result of poor flushing; however, it is unclear how dredging would address this issue. Moreover, if implemented, any dredging would bring about the adverse effects discussed previously. Because the project site is already known to have poor tidal flushing (an approximate tidal flushing cycle of 30 days) and degraded water quality, any additional impacts would only exacerbate these issues. To address this concern, the proposed project includes a mitigation measure in which mechanical devices will be installed within the marina basin to enhance the movement and mixing of water to meet the EPA guidelines of adequate tidal flushing. One option includes the use of four propeller-type devices, or oloids, that have been shown to meet the EPA guidelines through modeling. Although NMFS is generally supportive of this mitigation measure, we would encourage the inclusion of additional information regarding the operation and maintenance of these devices. For instance, any potential for impingement and/or entrainment of marine organisms, eggs, and larvae associated with the oloids should be described. Also, methods to avoid interactions with other marine life (e.g., enclosures or screens for the devices) should also be included. Finally, any information on maintenance of the devices and long-term water quality monitoring to ensure they continue to be effective would be useful and should be considered for inclusion in the Marina Management Plan.

A6-8

Marinas are often associated with periodic discharges of various pollutants, including oils, greases, and other wastes, which negatively impact local marine life. Moreover, antifouling paints used on boat hulls release large amounts of copper, which affects growth, development, and reproduction of various marine organisms. If the additional boats moored at the newly constructed marina use copper-based antifouling paints, it will lead to an increase in copper concentrations (already at elevated levels in Newport Bay) at the project site. NMFS believes the use of non-toxic alternatives to copper-based antifouling hull paints should be included as an important component of the long-term operating plans for the marina (e.g., as a requirement in the Marina Management Plan). Information on non-toxic antifouling strategies can be found on the following University of California Sea Grant Extension Program website:
<http://seagrant.ucdavis.edu/nontoxicdemo.htm>

A6-9

Marine Mammal Protection Act Comments

Marine mammals likely to be in the immediate project area are the California sea lion (*Zalophus californianus*) and in rare cases, the Pacific harbor seal (*Phoca vitulina richardii*). Sections in 3.5.2.2 of Appendix D and page 5.3.1.4 in the Biological Resources portion of the DEIR discuss the fact that sea lions will likely avoid activities and there is little chance for them to be harmed. Page 5.3-16 states that demolition and construction tasks for the project have aspects that could potentially affect Newport Harbor marine resources, including marine mammals. Specific comments are found below.

A6-10

Seals and sea lions are protected under the MMPA. See 16 U.S.C. § 1361 *et seq.* Under the MMPA, it is generally illegal to "take" a marine mammal without prior authorization from NMFS. "Take" is defined as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal. Except with respect to military readiness activities and certain scientific research conducted by, or on behalf of, the Federal Government, "harassment" is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal in the wild (Level A), or has the potential to disturb a marine mammal in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B). Should the proposed activities cause take of a marine mammal, it may be necessary to obtain a permit under the MMPA from NMFS.

The DEIR indicates that 18 cement piles will be driven into the sediments to secure the docks, but few details were given. The noise generated from pile-driving or other construction could affect marine mammals located within the vicinity of the project site, however, the DEIR did not provide information on underwater sound pressure levels associated with construction and operation, the timing, or the duration of the activity. NMFS recommends including detailed information on possible impacts to marine mammals from underwater sound in the final EIR including a detailed description of the proposed pile driving, including the type of pile driver, noise levels associated with the pile driving, and proximity to marine mammals in the area.

A6-11

Dredging will involve the removal of bayfloor sediments by either a clam shell dredge or by hydraulic dredge for the purpose of providing necessary depths to accommodate vessels to depths of -12 ft MLLW. In addition, page 5.3-17, under the *Marine Mammals* section, discusses how California sea lions have a potential to be present during the dredging period, but dredging is expected to have a "less-than-significant impact" on individuals that may be in the general dredging vicinity. Further, the DEIR indicates that it is likely that individuals would avoid the dredging operation, and although individuals may be curious, there is a low potential for harm to an individual or the population within Newport Bay, as there are no records of sea lions being harmed by the Upper Newport Bay dredging operation or the transport of dredge material by barges and tugs through Newport Harbor. Sea lions may occasionally swim into the marina, but according to the DEIR, they are not expected to haul out if measures are taken to deter their presence. NMFS recommends including detailed information on why it is expected that dredging will not have an impact on transiting pinnipeds and also provide information on what types of deterrence measures are expected to be taken to prevent animals from hauling out in the marina in the final EIR.

A6-12

Harassment of marine mammals may occur if hauled animals flush the haul out site and/or move out of the immediate aquatic area to increase their distance from pile driving or dredging-related activities, such as noise associated with the dredging, pile driving, presence of workers, or unfamiliar activity in proximity to a haul out site. Percussive piles, such as an impact hammer or drop hammer, generally result in the greatest noise production when compared to other methods of pile installation. Although percussive pile driving does not produce a continuous noise, the high amplitude and repeated blows of the hammer every few seconds can affect ambient noise levels in the surrounding acoustic environment. The force used to drive a pile, or power setting of the hammer, pile type and diameter, and hardness of the substrate the pile is driven, are important factors in determining the amount of energy released into the surrounding waters. Because of the high amplitude and wide frequency spectrum of pile driving noise, many species can potentially be affected. The measured sound exposure levels of a clamshell dredge may range between 75-88 dBA (re 20 μ Pa) at 50 feet. Animals have been observed flushing from haul out sites at a sound exposure level of less than 100dBA, and it is possible that marine mammals may modify their behavior as a result of the noise produced by the pile driving and dredging operations.

A6-13

Sounds introduced into the sea by man-made devices could have a deleterious effect on marine mammals by causing stress or injury, interfering with communication and predator/prey detection, and changing behavior. Acoustic exposure to loud sounds, such as those produced by pile-driving activities, may result in a temporary or permanent loss of hearing (termed a temporary (TTS) or permanent (PTS) threshold shift) depending upon the location of the marine mammal in relation to the source of the sound. NMFS is currently in the process of determining safety criteria (*i.e.*, guidelines) for marine species exposed to underwater sound. However, pending adoption of these guidelines we have preliminarily determined, based on past projects, consultations with experts, and published studies, that 180 dB re 1 μ P_{ARMS} (190 dB re 1 μ P_{ARMS} for pinnipeds) is the

A6-14

impulse sound pressure level that can be received by marine mammals without injury. Marine mammals have shown behavioral changes when exposed to impulse sound pressure levels of 160 dB re 1 $\mu\text{Pa}_{\text{RMS}}$. Studies have also shown that when exposed to the 90 dBA sound pressure level (the presumed cause) harbor seals flushed from the beach on San Nicholas Island, CA, but many returned to land within several hours (see 68 FR 52132 September 2, 2003).

A6-14
CONT

Mitigation measure, MM 5.3-A.1, includes a construction and post-construction marine biological mitigation monitoring plan that will include pre-construction, construction, and post-construction monitoring of the health of marine life at the project site and a final determination of areas impacted by the project. NMFS offers its expertise and assistance to the applicant in development of this mitigation plan.

In addition, NMFS recommends that the applicant consider including a design feature, particularly to the low-lying docks on the water, to non-lethally deter pinnipeds, specifically California sea lions, from hauling out. NMFS offers their expertise and assistance, should the applicant want to explore design modifications.

A6-15

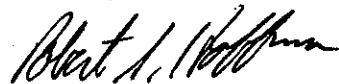
Based on the information provided, NMFS is not able to make a determination, at this time, as to whether it may be necessary for the applicant to apply for an Incidental Harassment Authorization, under section 101 of the MMPA. Once the information is received, NMFS will be able to re-evaluate the potential take of marine mammals.

Please note, that in the event of a construction vessel collision with a marine mammal, Mr. Joseph Cordaro, the NMFS Southwest Regional Office's Stranding Coordinator must be immediately contacted at 562-980-4017 and a report must be sent to the NMFS Southwest Regional Office.

A6-16

Thank you for consideration of our comments. If you have any questions, please contact Eric Chavez at (562) 980-4064 or Eric.Chavez@noaa.gov.

Sincerely,



Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation Division

Ung, Rosalinh

From: Eric Chavez [Eric.Chavez@noaa.gov]
Sent: Thursday, April 09, 2009 3:45 PM
To: Ung, Rosalinh
Subject: Marina Park DEIR
Attachments: Eric_Chavez.vcf

Hi Rosalinh,

As we discussed over the phone, my questions regarding the DEIR are included below:

- | | | |
|---|---|------|
| 1. Can you clarify the acreages discussed on p. 41 of Appendix D? In particular, how was the "net loss in HAPC is 0.13 acre" determined? | I | A7-1 |
| 2. Can you provide the size of the concrete pilings that will be used and any details on how they will be installed? | I | A7-2 |
| 3. App. D (p. 42) acknowledges the potential for maintenance dredging required for long-term operation of the marina due to poor flushing. Is this still the case with the mechanical devices (propellers) installed? | I | A7-3 |
| 4. What sort of long-term monitoring/maintenance is anticipated to ensure the propellers continue to function properly? | I | A7-4 |
| 5. Finally, can you point me to MM 5.3-A.2, mentioned under Biological Resources after MM 5.3-A.1? I can't seem to find it. | I | A7-5 |

Thanks in advance,
Eric

April 10, 2009

RECEIVED BY
PLANNING DEPARTMENT

APR 10 2009

Rosalinh Ung
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658

CITY OF NEWPORT BEACH

Subject: OCSD Comments to DRAFT Environmental Impact Report, Marina Park

The Orange County Sanitation District (OCSD) is pleased to take the opportunity to comment on the City of Newport Beach Draft Environmental Impact Report (DEIR) for the Marina Park project.

OCSD owns and operates the 15th Street Pumping Station (Pumping Station) adjacent to the proposed Marina Park project, located at 1514 West Balboa Blvd. This Pumping Station serves the City wastewater needs of the peninsula south of the Marina Park project. OCSD requires 24-hour access to this station for planned and unplanned maintenance activities, and emergencies. The DEIR should address increased traffic through the 15th Street and the alley parallel to Balboa Blvd. that could impact OCSD's primary access point for this critical piece of infrastructure.

A8-1

General DEIR Comments

OCSD is in agreement that the project will not adversely impact the OCSD sewer system.

A8-2

However, OCSD believes that the project could potentially restrict access to the current parking locations that OCSD has been using in the alley to access the Pumping Station wet well, drywell and electrical switchgear. Consequently, OCSD would like additional access to the pumping station and parking from the west side of the pumping station.

A8-3

OCSD is requesting that the City dedicate parking stalls 118 and 119 (as identified on the Proposed Development Plan Parcel Map) for joint-use parking for the City and OCSD. It is anticipated that the City will be dedicating a number of parking spots for its employees with City vehicles working at this new public facility. Dedicating these two spaces would allow OCSD guaranteed access to parking for operations, maintenance and emergencies, on an as-needed basis at the Pumping Station, and would also accommodate the City's needs to provide additional dedicated parking for its employees with City vehicles.

A8-4

OCSD is also concerned about Homeland Security requirements in addition to general access needs for the Pumping Station. The planning for the Marina Project area should ultimately accommodate an 8-foot block wall between the future Marina Park parking lot (now the SCE property) and the Pumping Station to replace the existing chain link fencing between the Pumping Station and the new Marina. This new wall should have an access gate from the parking lot to the Pumping Station.

A8-5

Ideally a small portion of the SCE property adjacent to the Pumping Station would be available to OCSD in the future for parking and odor control facilities. This would reduce the impact of OCSD maintenance vehicles on street or alleyway traffic during routine operation and maintenance activities.

A8-6

Increased public access and pedestrian traffic is expected near the Pumping Station once the Marina Park facility is built. Both the City and the public could benefit from a state-of-the art odor control facility being installed adjacent to the Pumping Station to mitigate odors generated in the City sewer system and pump stations serving the peninsula. OCSD staff is interested in continuing to discuss this issue in more detail. From recent OCSD staff communications with City Public Works staff, it is our understanding that SCE and the City are currently negotiating the sale of the SCE property adjacent to the Pumping Station.

A8-7

Specific DEIR Comments

On page 5.12-2 of the Marina Park DEIR, under the section called Wastewater Service, no mention is made of the existing OCSD 15th Street Pump Station just to the south and east of the proposed Marina Park development site.

A8-8

On page 5.12-2 of the Marina Park DEIR, under the section called Wastewater Service, information regarding OCSD treatment capacity at Treatment Plant No. 2 in Huntington Beach needs to be amended to accurately reflect the current design capacity of Plant No. 2 which is 168 MGD, not 172 MGD. The actual influent flow numbers for FY 07/08 were 129 MGD at Plant No. 2 – not 51 MGD as stated in the DEIR.

A8-9

On page 5.12-9 of the Marina Park DEIR, under the section called Wastewater Treatment Capacity, this information also needs to be amended to accurately reflect the current design capacity of Plant No. 2 which is 168 MGD, not 172 MGD. The actual influent flow numbers for FY 07/08 were 129 MGD at Plant No. 2 – not 51 MGD as stated in the DEIR.

A8-10

On page 5.12.5 of the DEIR under the section called Wastewater Treatment, current excess design capacity (unused capacity based on average daily flows) at Treatment Plant No. 2 is listed as being 144 MGD. The actual number is 39 MGD.

A8-11

Please update your records to ensure that all future CEQA documentation and comments sent to the Orange County Sanitation District are sent to the attention of Mr. Patrick McNelly, Principal Staff Analyst. Please contact Patrick at (714) 593-7163 if you have any questions.

A8-12

James D. Herberg, P.E., BCEE
Director of Engineering

JDH:PMc:sa

Ung, Rosalinh

From: McNelly, Patrick [PMCNELLY@OCSD.COM]
Sent: Thursday, March 12, 2009 10:26 AM
To: Ung, Rosalinh
Subject: Marina Park DEIR Correction for OCSD Flow Numbers
Attachments: OCSD Fact Sheet.pdf

Rosalinh,

Please review the attached information regarding OCSD Treatment Capacity at Treatment Plant No. 2 in Huntington Beach so that the information in the referenced EIR (PA2008-040) accurately reflects the real capacity of Plant No. 2. Which is 168 MGD, not 172 MGD. The actual flow numbers for FY 07/08 were 129 MGD at Plant No. 2 – not 51 MGD.

A9-1

Please contact me if you have any questions.

Patrick McNelly
Principal Staff Analyst
Orange County Sanitation District
(714-593-7163)
pmcnelly@ocsd.com

Miscellaneous Statistics

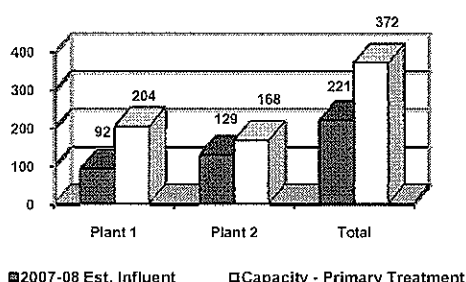
General Information

Year of Formation 1948
 Form of Government..... County Sanitation District
 Authority..... Section 4700 et. seq.
 California Health & Safety Code
 Service Area 471 sq. miles
 Service Population Approximately 2.5 million
 2007-08 Assessed Value..... \$292.7 billion

Miles of Sewers..... 568 miles
 On-Plant Pump Station..... 1
 Off-Plant Pump Stations 16
 Operating Authority RWQCB/NPDES Permit No.
 CA0110604
 Statewide WDR Order No. 2006-0003
 Authorized Staff (Full-Time Equivalent) 641.00

Treatment Information

Daily Influent Flow to Total Primary Capacity Comparison (in mgd)



2006-07 Influent BOD:

Plant No. 1 290 milligrams per liter
 Plant No. 2 230 milligrams per liter

2006-07 Influent Suspended Solids:

Plant No. 1 273 milligrams per liter
 Plant No. 2 270 milligrams per liter

2006-07 Effluent BOD 48 milligrams per liter

2006-07 Effluent Suspended Solids.. 33 milligrams per liter

2006-07 Biosolids Beneficially Used 231,480 wet tons

Primary Treatment Capacity (includes standby):

Plant No. 1 204 mgd
 Plant No. 2 168 mgd
 TOTAL 372 mgd

2007-08 Estimated Average Daily Influent:

Plant No. 1 92 mgd
 Plant No. 2 129 mgd
 TOTAL 221 mgd

Secondary Treatment Capacity:

Plant No. 1 110 mgd
 Plant No. 2 90 mgd
 TOTAL 200 mgd

2007-08 estimated Electricity Generated:

Plant No. 1 36,624,000 kwh
 Plant No. 2 57,888,000 kwh
 TOTAL 94,512,000 kwh

Legend:

mgd – million gallons per day
 kwh – kilowatts per hour

Financial Information

Fees and Charges:

	2006-07 Actual	2007-08 Projected	2008-09 Proposed	2009-10 Proposed
One-Time 3-Bedroom Residence Connection	\$4,360.00	\$4,517.00	\$4,671.00	\$4,834.00
Average Annual Single-Family Residence Fee	\$165.80	\$182.00	\$201.00	\$221.00
District's Avg. Share of Ad Valorem Property Tax	1.80%	1.80%	1.80%	1.80%
Cost to Collect, Treat, & Dispose of 1 Million Gallons	\$1,268.38	\$ 1,516.06	\$ 1,654.98	\$ 1,738.13

Summary of COP Issues:

September 1993 Refunding	\$ 26,900,000	May 2007A Refunding	\$ 93,655,000
August 2000 Refunding / New Money	196,600,000	December 2007B New Money	300,000,000
August 2003 New Money	191,500,000	May 2008A Refunding	77,165,000
March 2006 New Money	196,600,000	Total Outstanding COP Balance 7/1/08	1,082,420,000



RECEIVED BY
PLANNING DEPARTMENT

MAR 30 2009

CITY OF NEWPORT BEACH

March 24, 2009

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach
Planning Department
3300 Newport Beach Boulevard
Newport Beach, CA 92658-8915

Subject: Review of Marina Park Draft EIR

Dear Ms. Ung:

The City of Irvine staff has received and reviewed the information on the above referenced project and offers the following comments:

COMMENT 1

Section 2: Executive Summary, Page 2-1: Provide a description of the existing land uses. Direct the reader's attention to Section 3, Project Description or add additional explanatory text.

A10-1

COMMENT 2

Section 2: Executive Summary: There does not seem to be "before" schematics or site plans in the EIR except for on page 2 of the Walker Parking Consultants Parking Management Plan that is included in Appendix J. The graphic provides important details, such as a view of the existing beach, marina, mobile homes, and orientation and location of the existing tennis courts that are essential for context. Also, it would be useful if Exhibit 3-2, Local Vicinity Map or another graphic was revised to depict the end of Balboa peninsula so that the dead-end was more prominent.

A10-2

COMMENT 3

Section 2: Executive Summary: The study does not state the location to where the existing 57 mobile homes will be taken. Are these homes going to be relocated within Newport Beach, and increase the number of dwelling units and/or density of another mobile home site, or are they going to be relocated out of the city, or demolished? If they were relocated within Newport Beach, the trip generation in the Traffic Analysis would need to be revised to reflect the continued use of those residential units in another location.

A10-3

Ms. Rosalinh Ung
March 24, 2009
Page 2

COMMENT 4

Section 3 Project Description, Page 3-2, Section 3-2, first paragraph: An existing boat launch located at 18th and Bay Avenue is mentioned in the third sentence, and the last sentence states that "None of the existing facilities are suitable for reuse in the new park development." Exhibit 3-3 seems to show new sidewalk at the end of 18th street. Neither the study nor the exhibit state that the boat launch is being removed or whether it is being relocated. Some text addressing this issue would be helpful. The removal of a boat launch could reduce a significant number of vehicle trips around the study area, after the motorists know that it is gone, and are informed where the nearest one is located. It is likely that for a period of time, there will still be motorists with boats on trailers driving through the site searching for the boat launch.

A10-4

COMMENT 5

Section 3 Project Description, Exhibit 3-3, Site Plan: There appear to be two dead end parking aisles in the parking lot nearest the new marinas. Address whether better circulation alternatives can be provided to avoid cars backing out of these angled parking drive aisles.

A10-5

COMMENT 6

Section 3 Project Description, Exhibit 3-3, Site Plan, Pedestrian Issues: There does not appear to be a walkway connecting the new marina for the sailing program boats and the sailing building, as the visiting vessel marina is between them. Address whether children will be walking from the Sailing Program building through the parking lot to the marina, or whether instructors will be bringing the sailboats used in class over to the bay closer to the Sailing Program building. Address whether children will be involved in summer programs at the community center building and then walking over to the tennis courts. The pedestrian route from the community center building to the tennis courts appears to be missing or it traverses within the parking lot/drive aisle at the 15th Street access, or is somewhat circuitous out to West Balboa Boulevard and then along 15th Street.

A10-6

COMMENT 7

Section 3 Project Description, Section 3.4.2, Page 3-17: Last sentence in the first paragraph: "The City has exempted itself from the provisions of its own zoning regulations." This section states that the Zoning Code is not going to be amended to add text to state that it does not apply to CIP projects. It states that the Code does not contain specific development regulations for this type of facility, and that some features of the Marina Park will exceed 35 feet, which if raised as an issue by the City Council, would require a use permit. Additional text could be added to discuss the many other permits that this project will need to obtain from various agencies such as the US Fish and Wildlife, California Fish and Game, and the US Coastal Commission for the dredging efforts.

A10-7

Ms. Rosalinh Ung
March 24, 2009
Page 3

COMMENT 8

Section 3 Project Description, Section 3.4.2, Page 3-17, 2nd paragraph: This section of the report states that there have been public forums held on the project. Please provide information whether there was opposition from the American Legion at the removal of the existing Veteran's Park, and the relocation of the public tennis courts onto Veteran's Park. Were there activities held outside in Veteran's Park that will no longer be able to be conducted, or will they use the new Marina Park for those activities? Additional text would be helpful to discuss the benefits of the proposed park amenities compared to the existing features and whether there was opposition from the mobile home dwellers, and whether relocation assistance will be provided.

A10-8

COMMENT 9

Section 5-11 and Appendix K: How was the traffic associated with the cumulative approved projects added? How was the trip distribution determined? Was a model used to distribute these volumes? If so, provide model data to the City of Irvine for review.

A10-9

COMMENT 10

Section 5-11 and Appendix K: Some of the intersections are non-standard intersections.

- A) The ICU for Newport Boulevard at Coast Highway was taken at the southbound Newport ramps at Coast Highway because this intersection is grade separated. However, the volumes on Newport crossing Coast Highway do not seem to have been considered in the 1 percent evaluation as discussed in the following comment.
- B) One of the main intersections near the project site is Newport Boulevard at West Balboa Boulevard which was not evaluated, even though it is closer to the project than any other intersection in the study area. Is this because it has a non-standard configuration that can not be evaluated with an ICU? Explain whether there is another analysis methodology that can be used to evaluate the project's impact, such as Highway Capacity Methodology for stop controlled intersections.

A10-10

COMMENT 11

Section 5-11 and Appendix K, Table 5.11-4: The traffic volume data presented for the intersection of Newport Boulevard and Coast Highway (Intersection #3) appears to be under-represented on Table 5.11-4 and should be further analyzed.

- Figure 3 of Appendix K identifies the project trip distribution (30 percent to and from the east, 25 percent to and from the north, and 10 percent to and from the west), which results in 65 percent of project trips on the northbound approach. Based on this information, the PM northbound Newport approach volume shown on Table 5.11-4 as 0 (zero) should be changed to 12. The ICU at this location does not evaluate the northbound approach, because it is taken at the ramps below and west of the grade separation, consequently, the 1 percent test can not be conducted with the volumes on this ICU. The northbound volume should be provided from some other source, and the 1 percent test should be conducted.
- The AM southbound Newport volume shown on Table 5.11-4 as 0 (zero) should be revised to 4 based on the trip distribution presented. Similar to the northbound

A10-11

Ms. Rosalinh Ung
March 24, 2009
Page 4

analysis, the southbound volume should be provided from some other source and the 1 percent test conducted.

- The AM westbound Coast Highway volume on the free ramp in the non-peak is 370. Dividing 5 by 370 is 1 percent, and this meets the 1 percent test. The word "Yes" in the right column on Table 5.11-4 should be changed to "No", and an ICU analysis (existing plus growth plus project and plus cumulative approved projects) should be performed for this intersection.
- The AM eastbound Coast Highway volume shown on Table 5.11-4 as 0 (zero) should be revised to 2 based on the trip distribution presented.

A10-11
CONT

COMMENT 12

Appendix K, Table 8, Cumulative ICU Analysis Summary of two intersections: There is a very small change between the existing, background, background plus cumulative, and background plus cumulative plus project scenarios for the two intersections of Newport/Via Lido and Newport/32nd. Explain why the differences in ICU results for these two intersections are so small when comparing the various scenarios analyzed.

A10-12

COMMENT 13

Section 5-11 and Appendix K: It is understood that more residential development within the City could create a greater interest in attending classes and activities at Marina Park. The development of more commercial areas within the City could also create an increase in traffic from adjacent residential areas around the project site and through the study area intersections. An increase in traffic due to the Marina Park project is most dependent upon the number and frequency of the scheduled activities, (proposed activities are listed on pages 3-10 for the Community Center and on pages 3-13 for the Sailing Program Building). Ultimately, the amount of traffic is limited by the availability of parking and the ease of circulation (for parents dropping off children). Another factor that could affect the volume of traffic at the Marina Park site is the availability of public transportation and shuttles (Exhibit 3-3, Site Plan appears to show a bus turnout at W. Balboa Blvd and 17th St). The sailing program is said to potentially have rentals of sailboats, canoes, kayaks, and other watercraft (page 3-13) in addition to its classes and camps, which could generate increased traffic or be accommodated by shuttles to offsite parking locations. Additional text to discuss this should be incorporated.

A10-13

COMMENT 14

Pages 5.11-13 through 5.11-15 Parking Study portion of the Traffic Study and Appendix J Parking Management Recommendations: A parking attendant would need to monitor the metered self-parking areas to ensure that patrons have paid, and have not parked longer than the number of hours for which they have paid. The study does not get into discussion whether fines/tickets or towing would result from vehicles exceeding their parking time. If not gated or attended, there could be a queue of vehicles within the parking lot driving around or waiting for available spaces, or waiting to pick up children from classes. These vehicles could block parking spaces for those who wish to leave. Additional text could be incorporated to explain these constraints.

A10-14

Ms. Rosalinh Ung
March 24, 2009
Page 5

COMMENT 15

Pages 5.11-13 through 5.11-15 Parking Study portion of the Traffic Study and Appendix J Parking Management Recommendations: No mention was made of installing gates with an attendant at the accesses of the parking areas, as is common at some marina and beach locations. If gates were situated such that they did not create a backup of traffic onto the public streets, and they did not remove parking spaces, they could be an option. Attendants could monitor the number of spaces occupied, and verify that those entering were Marina Park patrons by showing proof of registration in a sailing class or community center activity, and limit the general beach parking to those remaining spaces. An attendant could also direct motorists to the appropriate boat launch areas and specific features of the park, to alleviate driver confusion and facilitate way-finding.

A10-15

COMMENT 16

Section 6, Alternatives to the Proposed Project: Staff understands that the traffic generation of the various alternatives would be much the same as for the "with project". If the project consists of the removal of the existing 18th Street boat launch, and another boat launch is not located within or near the project site, the project and all of the alternatives except the "No Project" have the potential to reduce traffic and reduce the need to provide extra long stalls for cars pulling trailers.

A10-16

COMMENT 17

The Marina Park Draft EIR does not appear to address Climate Change. AB 32, the California Global Warming Solutions Act of 2006, signed by Governor Arnold Schwarzenegger in September 2006. AB 32 is now codified as Health & Safety Code Sections 38500-38599. Provide an explanation of how the project will address AB 32.

A10-17

Thank you for the opportunity to review and comment on the proposed document. Staff would appreciate the opportunity to review any further information regarding this project as the planning process proceeds. If you have any questions, please contact me at by phone at (949) 724-6559 or by email at sjones@cityofirvine.org.

Sincerely,



SHERMAN JONES, AICP
Associate Planner

cc: Bill Jacobs, Principal Planner
Sun-Sun Murillo, Supervising Transportation Analyst

To: Rosalinh Ung
Associate Planner
City of Newport Beach Planning Department
3300 Newport Blvd.
Newport Beach, CA 92658-8915

20 April 2009

From Environment Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Comments on Marina Park DEIR dated February 26, 2009

EQAC is pleased to take this opportunity to provide comments on the referenced DEIR. Our comments are generally listed in their order of appearance in the documents with page and paragraph references as needed. We hope that they are constructive and assist the proponent in producing the best possible result for the City of Newport Beach

2. Executive Summary

Refer to Table 2-1, Executive Summary Matrix (pp. 2-2 to 29). The logic in this Table is confusing or wrong.

A11-1

Environmental Impacts under Project Specific or Cumulative (left side of Table) should lead to Mitigation Measures (center of Table) and result in improvements as noted in Level of Significance after Mitigation (right side of Table). For example, Air Quality Impact 5.2-A (pg. 2-4) is shown as potentially significant, leading to 3 mitigation measures, resulting in less than significant after mitigation. However, Air Quality Impact 5.2-1 (pg. 2-5, 6, 7, 8) is shown as less than significant, leading to 11 mitigation measures resulting in less than significant after mitigation. Shouldn't the original impact have been shown as potentially significant?

Cultural Resources Impact 5.4-A (pg. 2-11) is shown as no impact leading no mitigation resulting in less than significant after mitigation. Did no mitigation result in deterioration? Cultural Resources Impact 5.4-D (pg. 2-12) is shown as less than significant but cites a mitigation measure which could stop or delay the project for a significant period of time. Doesn't that make the Impact potentially significant?

A11-2

Geology and Soils Impact 5.5-D (pg. 2-14) goes from potentially significant to no impact with no mitigation measures. How is this possible?

A11-3

Hazards and Hazardous Materials Impact 5.6-G (pg. 2-16) asserts no project impact related to implementation of an "adopted emergency response plan or emergency evacuation plan". However, Balboa Blvd. is the main peninsula emergency response and evacuation route, and it will be occupied by trucks and construction equipment during significant portions of the development phase. This slow-moving traffic is a potentially significant impact and should be addressed with a specific mitigation measure assuring that there is always space on-site for all such project related equipment in the event that Balboa Blvd is needed for emergencies and/or Peninsula evacuations.

A11-4

Land Use and Planning Impact 5.8-B (pg. 2-22) relates to project conflict “with any applicable land use plan...” and asserts a less than significant impact. How does this become no impact with no proposed mitigation?

A11-5

Public Services Impact 5.10-D (pg. 2-25) is shown as Beneficial, but results in no impact after no mitigation. Shouldn't the final result be Beneficial?

A11-6

5. Environmental Impact Analysis

5.1 Aesthetics

In general, the impact on environmental aesthetics is a major improvement for the proposed project area. The removal of current vegetation and replacement with new vegetation is also a monumental improvement and will be more “green” and visually appealing. However, the developer should consider the following comments in planning and mitigation for the project.

A11-7

Open space

It is planned to replace the open green space (American Legion Park) next to the American Legion with two (2) public tennis courts. Included will be the elimination of 6 to 10 mature trees. Is there a way to save these mature trees?

Viewers

Viewers affected by the proposed changes will include those attending events within the American Legion facility and residential viewers on 15th Street. American Legion Park will be replaced by two tennis courts, including fencing, tennis netting and lights, in a location that is closer to residences than the existing courts. Court lights and glare will replace the current darkness. The EIR should analyze how residents will be affected by the additional light and noise and social occasions at the American Legion Hall will be disrupted by the additional noise and glare from the adjacent tennis courts.

A11-8

Sailing Center and Lighthouse

The Balboa Center, at 35 feet, 6 inches, is over the 35-foot standard of height. The Lighthouse, at 73 feet, is double the Shoreline Height Requirement, adopted over 30 years ago, and will have a light at the top. The EIR should analyze the visual impacts of the building height and new light source to area residents.

A11-9

5.2 Air Quality

Please provide an analysis and assessment of the local, immediately proximate impacts to Newport Beach residents. Any and all air quality impact analyses and assessments for Marina Park in Newport Beach appear to be inaccurate to the extent they factor in, or are based on, Local Air Quality Measurements taken at the Source Receptor Area (SRA) 18. For measurements on ozone and carbon monoxide, the closest SCAQMD air quality monitoring station for SRA 18 is in Costa Mesa at Mesa Verde Drive. Measurements of particulate matter pollutants (PM₁₀ and

A11-10

PM_{2.5}) are drawn from a station in Mission Viejo. *See* 5.2-1 and 5.2-2, pages 5.2-10 through 5.2-11. These data do not represent actual Newport Beach air quality, or air quality on the Peninsula.

As the DEIR acknowledges, the South Coast Air Basin is designated as “non-attainment” because the ambient air quality for the area *already* exceeds the State and National standard for the particulate matter pollutants (PM₁₀ and PM_{2.5}), the State standards for ozone (1 hour), and the National standards for ozone (8 hour). *See* Page 5.2-11.

A11-10
CONT

To address the proposed project’s impact on the existing noncompliance levels, the DEIR states that the ambient concentrations of pollutants are measured at the SRA station, and based upon these concentrations, a Localized Significance Threshold (“LST”) is developed, which in turn represents the “maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable state or national ambient air quality standard.” *See, e.g.,* Pages 5.2-25 through 5.2-29.

However, as addressed above, the SRA (and therefore LST figures) do not account for the projected cumulative construction and operational impacts of projects missing from Table 4.1 (pg. 4.5)-Aerie, Sunset Ridge, Banning Ranch. Thus, it appears that the DEIR’s conclusions that the maximum emissions from the impacts are less than significant (either before or after mitigation) cannot be not based on accurate data because the LSTs are not based on accurate data (See Section 7 of this report).

The DEIR is missing any analysis that incorporates the South Coast Air Quality Management District’s (SCAQMD) “all feasible measures” recommendation. It appears the EIR should be amended to include such discussions. In the beginning of the discussion on Air Quality, the EIR expressly states that the SCAQMD submitted a comment letter in response to the NOP on Marina Park.

One of the strong recommendations made by SCAQMD was that the Marina Park air quality analyses include:

“Implementation of all feasible measures beyond what is required by law to minimize or eliminate significant adverse air quality impacts”.

A11-11

The DEIR states affirmatively that it “incorporated” that suggestion (*See* “5.2.1 Introduction” at page 5.2-1)

However, none of the analyses concerning air quality even mention any measures “beyond what is required by law,” and the *regional* air quality measurements. Instead of also looking at how an impact can be reduced by “measures beyond what is required by law,” most of the analyses conclude that the impact at issue amounts to “no impact” or is “less than significant” (and thus requires no mitigation of any sort) because it is consistent with a general plan “policy” or a guideline. This approach appears backwards and circumvents the spirit of the SCAQMD recommendation.

The concerns are underscored by the fact that the “legal” standards by which the EIR analyses determine compliance are in the context of the local air quality’s violations of both State and

National air quality standards. The EIR needs to identify what measures have been incorporated beyond those required by law.

A11-11
CONT

Although the DEIR refers to two mitigation measures to be employed for the air quality impacts, it does not explain how these measures actually reduce the contaminants on the short-term (construction) or permanent (operational) bases. More information appears necessary.

5.3 Biological Resources

The EIR should analyze whether the use of non-native landscaping would have an impact on the marine environment.

A11-12

The Project Objectives are missing a critical component, i.e. the opportunity to showcase the bay setting and its habitat, and make it part of the visitor experience.

A11-13

What is impact of park lighting on night sky? Will it be more or less than current? How could that impact the ability of birds to nest at the site?

A11-14

5.6 Hazards and Hazardous Materials

5.6.2 (pp5.6-5 to 5.6-6), Sediment Evaluation

This section describes core sampling done to test for hazardous materials. It describes Areas A,B & C as sites of core samples but fails to plot these locations on a map. Also, it describes the corings taking place above and below "the 0 feet MLLW". It fails to define this description. (Calls to the city failed to provide a definition.) This is troubling for two reasons.

A11-15

1. Pg. 5.6-6 states "soils were tested based on their consistency to be deposited....." at various sites, but
2. 5.6-A (Pg 5.6-7) states that "during construction activities, the proposed marina area will be dredged to -12 MLLW". This would seem to indicate that they will be digging much deeper than the core samples (0 feet MLLW) and dredging samples noted on pg 5.6-6. It seems that deep core samples should be done considering the close proximity of the contaminated Rhine Channel and shipyard areas. Core samples should be obtained to identify potential hazardous materials at -12 feet MLLW (whatever that means)

Impact 5.6-B (pg 5.6-8) Accident Conditions - Project-Specific Analysis
Refers to "extensive excavation of the marina.....for a relatively limited time." This is vague and overly broad. The hazardous materials removed from the excavation will have to be removed from the site. Given the location of the project, heavy traffic will be an issue. Also, if a spill or truck accident occurs on W. Balboa Blvd. it could cause an extreme impact. The project site is quite a distance from the branching (alternative route) at W. Superior. The section further states that "because of the limited duration of these activities.....the potential for hazard impact during these activities would be less than

A11-16

significant". A detailed time table for dredging, truck staging, barges (if needed) and traffic management should be prepared and submitted before work begins.	A11-16 CONT
Referring to the operational marina (pg 5.6-8) the DEIR states that "In addition, operation of limited-stay.....vessels to stay in the marina for up to 30 days. ...the marina would not include maintenance areas, vehicle boat wash areas, or fueling". How, then will these boats dispose of the waste accumulated over the course of their stay? This is indeed a hazardous consequence of the construction of this project	A11-17
Cumulative (pg 5.6-8)-The DEIR states that "Impacts associated with project demolition....project could contribute to significant cumulative hazard.....related to asbestos and lead-based paint". Will they not be required to hire specialists to remove asbestos and lead paint before general demolition as is the case in all other construction projects?	A11-18
Impact 5.6-G (pg 5.6-13) states that "the project will not constrict access...the onsite circulation system..." No onsite circulation system is included in the document and therefore, cannot be evaluated. Considering the location of the project, it is difficult to imagine that it will not seriously impact off-site circulation as well, especially traffic trying to leave the area.	A11-19
5.7 Hydrology and Water Quality	
Please provide stormwater runoff and drainage project analyses. Grease – Mitigation Measures (pg 5.7-7) How will pollutants not easily seen, like oil or grease, be handled?	A11-20
Page 5.7.11 Project -Specific Analysis (pg 5.7-11, bottom of the second paragraph) Use California native and California friendly plants for landscape management in the proposed vegetative bioswales and landscape biocells.	A11-21
APPENDIX H: DRAINAGE AND WATER QUALITY INFORMATION	
Page 7: Specific Industrials/Commercial Details Third box down and to the right- Does the parking analysis include a restaurant? Of what size?	A11-22
Page 16: Source Controls BMPs N15 Second box from bottom on the right- Shouldn't the streets and parking lots be cleaned once a week and not quarterly as planned?	A11-23
Page 26 Will there be a wash down facility for small and large sailing boats? How will contaminated wastewater from this operation be controlled?	A11-24
TC-32 Bioretention Table one	A11-25

This data is based on work done 10-15 years ago. Is more recent data available?

A11-25
CONT

5.8 Land Use and Planning

In the Executive Summary, Impact 5.8-B and in Section 5.8.4 the DEIR states that “the project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the General Plan, Specific Plan, Local Coastal Program or Zoning Ordinance)...”

However, the DEIR states that the project is located within the 35 foot Shoreline Height Limitation Zone addressed under Chapter 4 of the CLUP, a component of the Local Coastal Program. In addition, the DEIR states that the project may require a Use Permit to allow the Community and Sailing buildings to exceed the base height limit of 35 feet and a Modification Permit to allow structures located on the site to exceed the 35 foot height limit per the zoning code.

A11-26

The language should be revised in the Executive Summary and Section 5.8.4 to reflect these possible measures that could be required, and remove the language stating that “the project would not conflict with any applicable land use plan, policy, or regulation...”.

5.10 Public Services

Impact 5.10-D (pg. 5.10-6) deals with beneficial aspects of the proposed project with respect to overall increase in parkland. However, the DEIR does not deal with the negative consequences of elimination of 2 public tennis courts in an area where other public tennis courts are miles away. Elimination of these 2 courts is in direct contradiction to the assertion made on page 1-14 that the “proposed project will include new and expanded versions of all existing recreation facilities now found within the existing site.” Is there any evidence to show that these courts are not needed or underutilized?

A11-27

In addition, the project plan requires demolition of the existing tennis courts and an adjacent Tot Lot, both of which are actively utilized and unique to the adjacent community. Since their loss during the project development phase would negatively affect the community and visiting users, it would be helpful to have a mitigation measure showing that the tennis courts and Tot Lot would be replaced and available prior to demolition of the existing facilities.

A11-28

Would the project increase the need for lifeguard services, especially with the Tot Lot located close to the beach?

5.11 Transportation and Traffic

Page 5.11-1. Section 5.11.2 – First sentence calls for 19th Street, but the map on Exhibit 5.11-1 is showing 18th Street. Which is correct?

A11-29

Page 5.11-7. Table 5.11-3: Net new trip number shows 352; however, on page 5.11.8 (at the top) it shows a net increase number of 477. Please explain the difference. A11-30

Page 5.11-12. Project – Specific Analysis Section: Primary access to project can't be via 17th Street by looking at the map on Exhibit 3-3 Site Plan. What is the intended primary access to the project? A11-31

Page 5.11-14. (third and fifth lines from the top)- Take out approximately 127 and approximately 26, but keep the hard 127 and 26 figures to agree with the total 153 parking places listed elsewhere in the DEIR. A11-32

Do the current 21 parking spaces remain during the construction and when the project is completed? These spaces are located at the curb and the sand facing the bay, between 18th & 19th Streets. Who is expected to use these spaces? A11-33

What provisions will be implemented to assure that ocean beach users will not consume parking spaces meant for Marina Park users? A11-34

It is likely that, during the construction phase of the project, the residents, businesses and visitors to the Peninsula will face a lot of congestion. A rigorous traffic management plan with strict enforcement should be implemented to assure that the traffic analysis is upheld and that construction will be limited to weekdays only during summer and holiday periods. A11-35

Will the project include provisions for a public launch ramp for small shallow boats? Will the existing facilities at 15th and 18th Streets remain? A11-35

7. Other CEQA Considerations

Significant data concerning cumulative impacts are missing, and thus revisions/amendments to the DEIR are required. The DEIR states that

“Cumulative impacts are defined as impacts created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (See 4.2 Related Projects on page 4-1)

A11-36

Pursuant to CEQA guidelines, the DEIR included a list of related projects obtained from the City of Newport Beach, dated September 2008 (See Table 4-1, page 4-5).

The Table of related projects fails to include three large current and probable projects: *Sunset Ridge*, *Aerie*, and *Banning Ranch*. All such projects are in the immediate area. In fact, they are closer to the proposed Marina Park development than are several of the projects in the City's list.

A11-36
CONT

Thus, the cumulative impact analyses in this EIR lack crucial data. The analyses are dangerously inaccurate without such data. The EIR should be amended to include accurate analyses that consider these missing related projects. *This should be a concern for the accuracy of all impacts of the Marina Park project.*

Lastly, more data/information is needed concerning the environmental impacts of the project alternatives. Though CEQA guidelines do not require a DEIR's discussion of project alternatives to be as extensive as the analyses for the proposed project, the sparse discussion of the "Reduced Marina Alternative" provides no meaningful data for comparison and consideration. (See 6.3 "Reduced Marina Alternative," page 6-3).

A11-37



California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.**

March 21, 2009

Ms. Rosalinh Ung
Associate Planner, Planning Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

RECEIVED BY
PLANNING DEPARTMENT

MAR 25 2009

CITY OF NEWPORT BEACH

Dear Ms. Ung:

Thank you for the opportunity to review the Draft Environmental Impact Report Marina Park. We agree that the proposed project will not affect a historic resource and that significant impacts to archaeological resources are unlikely. However, the project area was not inspected for the presence of archaeological remains when it was developed therefore, it is possible that buried archaeological resources are present and could be impacted by dredging and excavation activities.

A12-1

While providing the opportunity for a Native American representative to monitor excavation and dredging activities places the city in compliance with SB 18, Traditional Tribal Cultural Places, a qualified archaeologist is still needed to identify archaeological materials and evaluate them using the California Register of Historic Properties criteria. Therefore, we strongly recommend that an archaeologist also be present to monitor excavation and dredging.

A12-2

If you have any questions, please call me at (949) 559-6490, or email pmartz@calstatela.edu.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Martz".

Patricia Martz, Ph.D.
President

Ung, Rosalinh

From: Felicia Sheerman [sheerman@roadrunner.com]
Sent: Thursday, April 02, 2009 6:38 PM
To: Ung, Rosalinh
Subject: Marina Park Project

Dear Rosalinh,

The Environmental Impact Report for the above subject project states the project could have impacts to archaeological resources, paleontological resources and burial sites. Due to the fact that the proposed project is in a culturally sensitive area it is our concern that the City of Newport Beach appoints Native American Monitors from the largest faction of the Tribe to represent this project.

A-13-1

We are the largest faction of the Gabrielino-Tongva Tribe, with over 85% of descendants of the historic Gabrielino Tribe. We have approximately 1,600 members, and the next largest faction has less than 150 members.

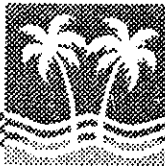
We strongly recommend the City of Newport Beach hire Native American monitors approved by our faction.

Should you have any questions regarding this matter, please do not hesitate contacting myself or our office.

Sincerely,

Hon. Felicia Sheerman, Tribal Councilwoman
Gabrielino-Tongva Tribe
Office: (310) 587-2203
Cell: (310) 428-7720
Email: fsheerman1@GabrielinoTribe.org
Website: www.gabrielinotribe.org

Central Newport Beach



Community Association

P.O. Box 884 • Newport Beach, California 92661

April 13, 2009

RECEIVED BY
PLANNING DEPARTMENT

Rosalinh Ung, Associate Planner
Planning Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

APR 13 2009

CITY OF NEWPORT BEACH

Re: Draft EIR – Marina Park

Dear Ms Ung:

Following are comments from the Central Newport Beach Community Association regarding the DEIR for Marina Park. CNBCA represents over 300 families who live in or own property between the two piers, including the area in which Marina Park is located.

A14-1

1. We are very appreciative about the long awaited implementation of Marina Park and are grateful to the City Council for its actions to move the project forward. We do, however, want the project to be the best it can be and minimize impacts on residents and visitors to the beach.

2. Comments made by CNBCA dated June 19, 2008 on the NOP for Marina Park were not included in the DEIR as were comments made by others. Some of those comments will be reiterated below.

A14-2

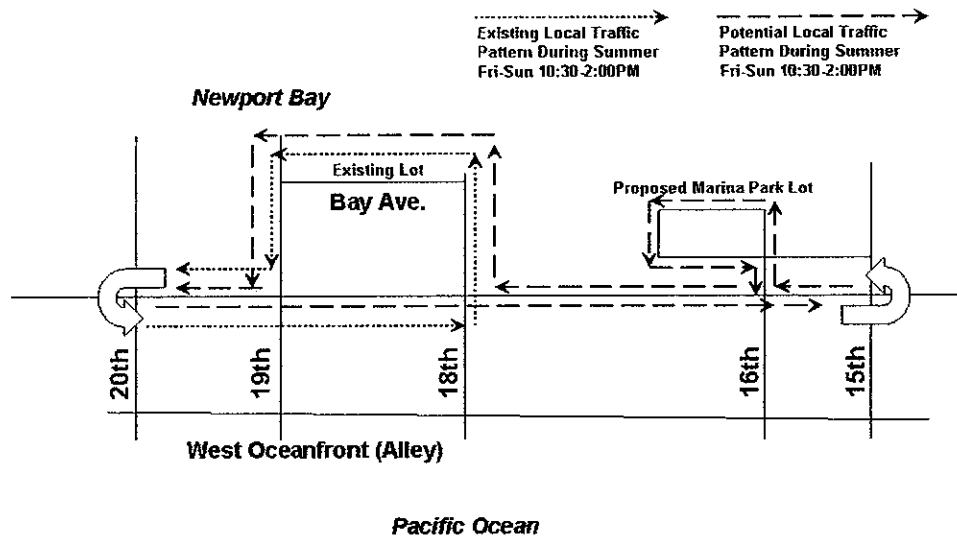
3. Parking analysis should include all potential users. Page 5.11-14 states that parking lots are intended for the project only and are not intended to provide additional beach parking. From this we infer that use of Marina Park lots for summer ocean beach parking demands will be discouraged. Even with this constraint, section 5.11 addresses parking for only the buildings at Marina Park. There is no allocation of parking for visitors to the grassy portions of the park, tot lot, public dock, hand launch or, more importantly the Newport Bay beach. There is very little bay beach available to the Public in Newport Beach; Marina Park will help to address this deficiency and as such should prove to be very popular. While the existing bay beach is accessible to the public, it is not readily visible to the public and therefore is lightly used. A proposed mitigation measure is to not program the Community building for use on Saturdays and Sundays from Memorial Day to Labor Day thus making that parking allocation available for only park and bay beach users.

A14-3

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|----|---|-------|
| 4. | The discussion of water circulation in the marina basin is disturbing. The bay beaches both upstream and downstream from the proposed marina are popular and involve human contact. Anecdotal input from users of the Marina Park beach indicate problems from using the bay for swimming and playing that may result from proximity to the Rhine Channel already. We do not need additional problems from the creation of a new marina. A proposed mitigation measure is prohibiting the washing or working on boats within this short term berthing marina. Additionally, MM 5.7-A.2 proposes the use of mechanical devices to aid flushing and mentions the option of use of four oloids. While the oloids move water well, we suggest that staff contact the County of Orange Dana Point Harbor Department for recent, local experience with oloids. There is indication of limited mechanical life in the marine environment and substantial utility costs. Any mechanical device chosen should be reliable and energy efficient and proven as such. | A14-4 |
| 5. | Public Safety needs to address the proximity of the tot lot to Newport Bay. It is akin to placing an unfenced tot lot next to an unfenced swimming pool. Lifeguard services should also be analyzed. | A14-5 |
| 6. | Access is proposed to be primarily from 16 th Street with limited access from Fifteenth Street. The 15 th Street access is from a 20 foot wide alley that is used for access to the American Legion Parking lot and for an apartment structure and a commercial building. Both the apartment and commercial buildings have parking that requires backing into the alley. A mitigation measure should require that access from 15 th Street be limited to only emergency and maintenance access needs with a gate at the east end of the Visiting Marina lot. | A14-6 |
| 7. | Add the residence on 18 th Street at Bay Ave. to the list of Sensitive Receptors (5-9.5) throughout the analysis. This is the private property most impacted by proximity to the project. | A14-7 |
| 8. | Traffic studies did not address traffic congestion that will undoubtedly occur in the general vicinity of Marina Park. All traffic analyses were conducted west of the intersection of Newport Blvd. and Balboa Blvd. Residents of and visitors to the peninsula will be most impacted by congestion between 15 th Street and 20 th Street on West Balboa Blvd, an area nearly one mile south of the nearest intersection studied (Newport Blvd. And 32 nd Street). West Balboa Blvd. Is the only arterial serving the entire length of the peninsula. Both the Marina Park lots will be visible from Balboa Blvd. And will be aggressively targeted by both ocean beach visitors as well as Marina Park visitors. For years there has been a summer traffic pattern between 18 th Street and 20 th Street that is generated by the parking lot on the bay between 18 th and 19 th Streets (see diagram, existing pattern). Cars hunting for a space, often after unloading family and cargo, will circle until a space becomes available on | A14-8 |

Balboa Blvd. Or in the parking lot. Our concern is that, if mitigation methods are not employed to discourage ocean beach usage of the Marina Park lots with signage, limited meter time or other methods, a local traffic pattern will develop that will severely impact residents and visitors destined east of Marina Park as well as visitors to the park. Mitigation measures to address the potential local traffic circulation and congestion should be addressed in the analysis. An analysis of the West Balboa and 15th Street intersection for summer AM peak weekend recreational period would be beneficial to understanding and controlling the inevitable congestion that will ensue around the park site.

A14-8
CONT



9. The Project Alternatives section considers only the no or reduced marina alternatives. A similar analysis should be applied to the Community Center building with a reduced size alternative with its reduced parking, traffic and visual impacts. A phased scenario with the Community Center being the last improvement as an alternative should also be considered.

A14-9

Thank you for the opportunity to comment.

Very truly yours,

Louise Fundenberg
Louise Fundenberg, President
Central Newport Beach Community Association

THOMAS R. ROSSI

April 7, 2009

Rosalinh Ung
Associate Planner
Planning Department
City of Newport Beach
3300 Newport Blvd
Newport Beach, CA 92663

RECEIVED BY
PLANNING DEPARTMENT

APR 09 2009

CITY OF NEWPORT BEACH

Re: Marina Park EIR Comments/Concerns

Ladies and Gentlemen:

I own the single family residence located at the corner of 18th Street & West Bay Avenue (1801 West Bay). I have observed and appreciate that great care has been given to ensuring the protection of view corridors, etc for the properties located on Balboa Blvd across the street from the Marina Park Project ("Project"). I believe that in some cases those views have even been substantially enhanced.

I believe it is a fair statement that my property above all others is very likely the most impacted by the proposed Project, and I believe that I am entitled to the same level of concern for my property by the City of Newport Beach and those involved with the design and implementation of the Project as has been given my Balboa Blvd neighbors.

On several previous occasions I made inquiry at Project Committee meetings, and expressed my grave concerns to the Project architects, my councilmen (more than one over the years) and others regarding my view, quiet enjoyment and property value being negatively impacted by any structure or other use situated near my property or in conflict with my panoramic view which currently includes harbor lights, the hills at and around Newport Center/Spyglass Hill, etc.

Each time I inquired, I was informed that the Girl Scout Building would be a "low profile" single-level structure for "Girl Scout only" events but that there was not yet any design that definitively described the actual height, size, type and exact placement of the subject building. I was further assured that my

P1-1

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concerns would indeed be given appropriate and sensitive consideration as the Project's plans progressed.

As late as last Friday when I met personally with Mr. David Kiff at City Hall, I was informed that no such definition regarding my concerns exists. I believe this situation is inappropriate and should no longer be ignored. In my opinion, this matter should have been addressed long before now, and my patience has gone unrewarded.

P1-1
CONT

In addition to view obstruction, my concerns regarding hours of operation, any rental or other use of the Girl Scout Building for private events such as parties or other non-Girl Scout-related activities remain unresolved. Obviously, any use that would place or generate additional parking/traffic burden (especially at early or late hours) close to my property would have a substantial negative impact on it. I was assured by the Committee that non-Girl Scout-related activities would not be allowed, but I have no concrete evidence of such restrictions. If such use restrictions exist, I would appreciate written confirmation of same at your earliest convenience.

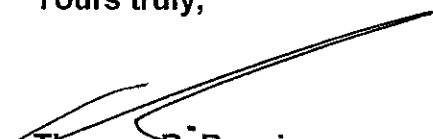
P1-2

In light of the foregoing, please accept this letter as my objection to the Project/EIR due to these issues being left unaddressed in a fair and equitable manner. I respectfully request your timely written response.

P1-3

Thank you for your anticipated courtesy and attention to my concerns.

Yours truly,



Thomas R. Rossi

CC: Mayor Edward D. Selich
Councilman Michael F. Henn